

APPENDIX A

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

2 IN AND FOR THE COUNTY OF PIMA

3
4 STATE OF ARIZONA,)

5 Plaintiff,)

6 vs.)

7 FRANK JARVIS ATWOOD,)

8 Defendant.)
9

Case Nos. CR-14005
CR-15357

10 November 25, 1985
11 Tucson, Arizona

12 HEARING RE: STATE'S MOTION FOR PROTECTIVE ORDER

13 DEFENDANT'S MOTION FOR EXHILATION

14 DEFENDANT'S MOTION TO PRODUCE AND
15 PROTECTIVE ORDER

16 DEFENDANT'S MOTION FOR DISCLOSURE

17 DEFENDANT'S MOTION FOR DEPOSITIONS

18 DEFENDANT'S MOTION FOR REDETERMINATION OF
19 PROBABLE CAUSE

20 BEFORE: THE HONORABLE JOHN G. HARKINS, JUDGE

21
22
23
24 COPY

Catherine V. Hanchen, RPR
Official Court Reporter
Division XII

25
SUPERIOR COURT PIMA COUNTY

1 previously discussed is having Ms. Gaynes come over and
2 just go through the boxes that I have to make some kind
3 of list or comparison with what they have to make sure
4 that nothing slips through the cracks.

5 If there is an issue that arises that has
6 some serious consequences either on the eve of trial or
7 later, I think the sheer volume of it is what's going to
8 contribute to it. And that is why we are trying to get
9 some manageable methods to make sure that doesn't
10 happen.

11 THE COURT: Good. That's what I have in
12 mind also.

13 Anything further, Mr. Bloom, on this issue?

14 MR. BLOOM: Yes, I do, Your Honor. I guess
15 I think that -- I'm also thinking about some -- I
16 received a -- to give an example, I received a phone
17 call this weekend off my answering service indicating
18 that I -- and I won't disclose what the call was because
19 I don't think it's something that has to be publicly
20 discussed, but it has to do with the case. And it has
21 to do with a witness that knew some information about
22 the case that had disclosed this to the prosecution on
23 May 14th by virtue of a call to 88-CRIME regarding this
24 case. And it was potentially a lead, a lead that would
25 exculpate or exonerate the defendant.

1 And yet in all my viewing of the disclosure
2 I have not seen this disclosure. I haven't seen
3 anything regarding it. And I'm just curious why I don't
4 get that kind of information, regardless if it comes to
5 88-CRIME or to the County Attorney's Office, since it's
6 really part and parcel of the same office. And if it
7 was something detrimental to Mr. Atwood, you can be sure
8 that the prosecution would be all over it and would be
9 ready to go and would be disclosing it at that point.

10 But when it seems to be -- and I don't know
11 if it is true or not, but that is just an example. So I
12 would ask them to re-evaluate the Brady materials if it
13 does exist and to -- this is just an example of a phone
14 call that purportedly occurred on May 14. If they could
15 tell me about this type of evidence, I certainly would
16 like to know about it now rather than have to file a
17 motion for new trial or on appeal if this ever occurred.

18 The other thing is it's my understanding
19 the only reason that I ever asked Mr. Davis -- it seems
20 like every time we get into something about what our
21 conversations are, it becomes a personality situation.
22 I never raised anything personal until Mr. Davis raised
23 it in the motion for exhumation. I didn't intend to
24 raise anything personal. But when he did that, I had no
25 recourse but to respond.

1 I did not ask that he disclose new
2 disclosure to me on the new number. What I asked him to
3 ~~do was simply give me all the disclosure on the cases,~~
4 ~~period.~~ Because I didn't know if Mr. Couser had
5 ~~everything or if he lost it or what.~~ I didn't want to
6 have to rely or have Mr. Couser in any way have any
7 responsibility anymore on the case. And so I asked him
8 for new disclosure.

9 That's all I was concerned about, not about
10 indictment numbers. But he seems to think that I was
11 concerned about indictment numbers. And he has a
12 different understanding of the law than I do, because
13 when you consolidate a case it's my understanding that
14 everything that occurred under each case number becomes
15 part and parcel of that one case. You don't just say,
16 well, you filed it under that case and so therefore you
17 can't get it in under this case. That's what
18 consolidation means; the cases are brought together for
19 whatever purpose.

20 And I indicate to him that now and on the
21 record that I am endorsing, so he knows that, I don't
22 think this has to be done, but I want it clear that I'm
23 endorsing that disclosure of Mr. Couser. And as I said
24 earlier to Your Honor, I will supplement that with
25 additional disclosure as I have it forthwith.

1 Therefore, I am requesting that he furnish
2 me with the rebuttal to the disclosure that has been
3 furnished to him. And I will ask him to do so
4 forthwith.

5 Now, he never addressed himself to that,
6 but I assume that's just case law in this state that if
7 there is disclosure made then you have to furnish
8 rebuttal. I don't know, I mean to me it seems like it's
9 pretty elementary.

10 THE COURT: You're aware of that disclosed
11 by Mr. Couser then and that's what you are endorsing?

12 MR. BLOOM: Yes,

13 THE COURT: Okay.

14 MR. BLOOM: That's all I'm endorsing, Your
15 Honor.?

16 THE COURT: Okay.

17 Let me ask Mr. Davis if he wants to address
18 any further, though, the disclosure that was provided by
19 Mr. Couser and any rebuttal that he might have to it.

20 MR. DAVIS: I don't want to take up the
21 Court's time with that. I will ask, and perhaps the
22 thing to do would be file my own if I see the need after
23 I examine that. I was not concerned with that. What I
24 was concerned with was moving the case along. I am
25 really concerned with getting experts because that's the

1 thing that could delay me if he doesn't get the
2 opportunity to examine their results and interview them
3 and check their results in a timely fashion.

4 I would just, with the Court's indulgence,
5 address the 88-CRIME lead exculpating the defendant.
6 Obviously Mr. Bloom knows something that I don't. So
7 now it's a secret, that is a Brady violation. If he has
8 any question about that and is willing to supply me with
9 any information, I will be glad to pursue that.

10 As far as that issue goes, there must have
11 been hundreds and maybe even thousands of calls about
12 this case offering theories, ideas, and possible
13 culprits. I don't propose for one minute to endorse
14 that all of that is Brady and somehow the burden is upon
15 the State to find amongst all those thousands of calls
16 to 88-CRIME every one that had a theory other than that
17 Frank Atwood did it.

18 I think that is an impossible burden. I
19 don't think that's Brady involved in this. I will keep
20 my eyes open. If the defendant would let me know what
21 his defenses are, it would help me recognize anything
22 that was Brady. But if Mr. Bloom has any ideas about
23 it, I will pursue it. But to impute to me the knowledge
24 of everything that was called over the phone to
25 88-CRIME, for instance, or other law enforcement

1 agencies about this, I think that's an impossible burden
2 and that does not go to Brady.

3 I have one file that is very thick which is
4 labeled merely the cuckoo file. And that consists of a
5 torrent of letters from obviously disturbed people about
6 this case. Mr. Couser and I used to get together on a
7 somewhat regular basis and compare our cuckoo files to
8 see if we were getting the same ones. Most of the time
9 we were.

10 But again, to apply the Brady label to
11 that -- but I will certainly disclose my cuckoo file to
12 Mr. Bloom and perhaps he can get an expert to decipher
13 what they are saying. But to endorse that everything
14 that's ever been called in on this case that points or
15 has a theory other than Mr. Atwood, I just can't meet
16 that burden. And I would rather deal with it in
17 specifics. And if Mr. Bloom has more details about the
18 May 14th call, we will get all the information about
19 that to him.

20 THE COURT: Last word on it, Mr. Bloom, is
21 that Mr. Davis is well aware of the State's
22 responsibilities pursuant to Brady and will be providing
23 everything that becomes known to him. I would not hold
24 him responsible for knowing of every phone call that
25 came in to 88-CRIME either. If you have some ideas of

1 particular calls or something like that, I am sure if
2 you will make it known to him he will try to have those
3 located for you.

4 MR. BLOOM: I resent the term "cuckoo
5 file." But I know it's a little joke. I don't think
6 there is anything hilarious about the case. But
7 evidently Mr. Davis has referred to it as that.

8 I want that file; if he is willing to give
9 it to me, that's fine, I will take it. I will take
10 anything that he has, regardless if he thinks it's
11 frivolous. I think there is a lot of things that he has
12 indicated that are frivolous that are very reliable
13 people that he has discounted entirely because it
14 doesn't fit in the scheme of his case. But I think I am
15 entitled to that information.

16 And if there are calls that give evidence
17 that are Brady material, I would expect him to give it
18 to me whether he thinks it's a joke or not. I really
19 don't think that's his decision to make. If he thinks
20 it's somebody that's not of sound mind, fine, that's
21 okay for him, but I want to investigate it. I want to
22 be able to check it out.

23 What really is brought to mind on this
24 motion is I recall another thing I wanted of great
25 importance, and that is I would like the -- and it

1 hasn't been disclosed to me -- the original calls made
2 to the police department on September 17th 1984 when
3 Vicki was allegedly taken or was found missing.

4 There were calls made by Mrs. Carlson to
5 the police department, and I don't have those calls, and
6 calls that were made by various witnesses on those
7 opening days following the 17th of September through the
8 25th until the defendant was arrested, those calls of
9 witnesses that they intend to use.

10 It's my understanding that those calls are
11 recorded. And unlike the police calls over the radio
12 which are destroyed after six months, those calls are
13 generally preserved and there is a tape. And if there
14 is not a tape transcription, then I would ask that they
15 furnish me with the tape of those witnesses they intend
16 to call wherein those witnesses made calls to 88-CRIME
17 or to the County Attorney's Office offering their
18 knowledge about the case.

19 And I would ask that I be given that
20 information. And the precise example that I was
21 thinking of, I know that Debbie Carlson called up the
22 police reporting the missing of her child. And I think
23 that I would like to have that call, the substance of
24 that call, the information provided therein.

25 THE COURT: Thank you.

1 Mr. Davis, you can furnish the file that
2 you made reference to then?

3 MR. DAVIS: Yes.

4 THE COURT: What about the phone calls that
5 were made at the time of Vicki Lynn's disappearance?

6 MR. DAVIS: I will have to check on that
7 and see if those tape recordings are still preserved.

8 THE COURT: All right.

9 Mr. Bloom, you will be entitled to that if
10 they are.

11 Mr. Bloom, you want to take which motion
12 next?

13 MR. BLOOM: Deposition.⁵

14 THE COURT: All right.

15 MR. BLOOM: Your Honor, this is my motion
16 for the deposition of Treva Daugherty. Without
17 repeating the motion, in substance, I want to depose
18 this woman because she is uncooperative. She is
19 uncooperative because -- I can only give you the brief
20 scenario to show you how uncooperative she is.

21 Your Honor should be aware that Mr. Davis
22 has sent letters to all witnesses on this case that the
23 State intends to call indicating to them that if in fact
24 the defense wants to talk to them that in substance
25 Mr. Davis would like to be present if that witness would

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 IN AND FOR THE COUNTY OF MARICOPA
3
4

5 STATE OF ARIZONA,
6

7 Plaintiff,
8

9 -vs-
10

11 FRANK JARVIS ATWOOD,
12

13 Defendant.
14

NO. CR-14065

15 Phoenix, Arizona
16 February 11, 1997

17 BEFORE: THE HONORABLE JOHN G. HAWKINS
18 Judge of the Superior Court
19

20 TRANSCRIPT OF PROCEEDINGS
21

22
23 *Copy for: Defense Attorney*
24
25

1 Q When you saw the shirt, did you notice
2 anything unusual about the shirt?

3 A No, I can't remember anything unusual
4 about it.

5 Q Did you see any blood on Mr. Atwood's
6 body when he came back to the park the first time?

7 A The first time he came back?

8 Q On his body.

9 A No, I didn't.

10 Q When I interviewed you on the 1st of
11 November -- remember we talked about the shirt, whether
12 he had a shirt on when he came back to the park?

13 A I don't remember it.

14 Q See if I can refresh your recollection on
15 Page 180 --

16 MR. DAVIS: November, '85?

17 MR. BLOOM: Yes.

18 I'm having trouble finding it. We
19 will move on to something else.

20 THE COURT: That's fine.

21 I'm about to ask if you are anywhere
22 near completion of your examination.

23 MR. BLOOM: No, Your Honor.

24 THE COURT: This is a good time for a recess
25 for the afternoon, Jurors, because counsel and I

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

STATE OF ARIZONA,)	
)	
Plaintiff,)	
)	
vs.)	CR 14065
)	
FRANK JARVIS ATWOOD,)	
)	
Defendant.)	
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Phoenix, Arizona
March 2, 1987
P.M. Session

BEFORE: The Honorable John G. Hawkins

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Prepared for Appeal

COPY

Janet Babicky
Court Reporter

1 THE WITNESS; I don't remember, Your Honor.

2 Q. BY MR. BLOOM: Mr. Bernsienne, we, without
3 going into detail about it, did you not discuss with me
4 about relationships, and I won't even specify, that you
5 had had with people in high school, sexual relationships
6 with people of, males, didn't you tell me that?

7 A. I may have. We talked about an incredible
8 amount of things those days. You kept a record, I didn't.

9 Q. Were you given a copy of it?

10 A. No, sir.

11 Q. Mr. Davis did not allow you to read it?

12 A. I haven't read it.

13 Q. Well, whether you read it or not, you do
14 recall, at least you can tell me from your own knowledge
15 whether it's in here or not, that you had such
16 relationships?

17 A. Yes.

18 Q. In high school, isn't that right?

19 A. Yes.

20 Q. And have on and off since that time
21 maintained that situation in your life?

22 A. Yes.

23 Q. And at some time, you became a member of a
24 secret organization; is that right?

25 A. No, sir.

1 Q. Is it a -- are you a member of the OTO?

2 A. No, sir.

3 Q. Or the AA?

4 A. No, sir.

5 Q. Now, the AA, do you know what the AA is?

6 A. Yes.

7 Q. Is that with an A, a couple of dots and a
8 line and K, and a couple dots and a line, I mean another
9 dot?

10 A. Something like that, yes.

11 Q. And the OTO, have you ever heard of those
12 initials?

13 A. Yes.

14 Q. What?

15 A. Yes.

16 Q. And are the tenets of that organization such
17 that you are not to reveal your membership?

18 MR. DAVIS: Objection, Your Honor; irrelevant.

19 THE COURT: Objection is overruled.

20 THE WITNESS: I don't know. I told you I wasn't
21 a member, so how would I know?

22 Q. BY MR. BLOOM: Were you aware of the tenets
23 of that organization?

24 A. No, sir.

25 Q. Did you have anything to do with that

1 organization?

2 A. No, sir.

3 Q. Did you hold yourself out to be a person with
4 knowledge of that organization?

5 A. Some -- I read books about it, but I knew
6 nothing about it. I was told nothing about an
7 organization.

8 Q. Did you know people in it?

9 A. No, sir.

10 Q. Did you know how to get in contact with
11 people that may have access to the organization?

12 A. No, sir.

13 Q. Well, you did know the name of the order
14 though, at least, didn't you?

15 A. Yes, sir.

16 Q. In fact, you had a great deal of conversation
17 with Mr. Atwood about this organization, didn't you?

18 A. Yes.

19 Q. Is the order, is it some kind of a -- does it
20 have something to do with being a mystical order, without
21 giving us the details about it?

22 A. I know nothing about it; I'm not a member.

23 Q. When you went to the preliminary hearing on
24 November 13, 1984 -- Do you remember that date, in Tucson?

25 A. Yes.

1 Q. Have you read that transcript?

2 A. No, sir.

3 Q. Do you remember on page 17 being asked these
4 questions and giving these answers:

5 "QUESTION: What is the name of the
6 mystical order that you referred to?

7 "ANSWER: I cannot tell you.

8 "QUESTION: Why, you don't know the
9 name?

10 "ANSWER: No, sir.

11 "QUESTION: Are you a member of it?

12 "ANSWER: I cannot tell you that either.

13 "QUESTION: What is so mysterious about
14 it you can't tell?

15 "ANSWER: It's private, it's between me
16 and my god."

17 Is that correct?

18 A. Yes.

19 Q. Did you say that?

20 A. Yes.

21 Q. So you did know the name at that time?

22 A. Anybody knows the name, pick up a book and
23 you can read, can't you?

24 Q. But you said you did not know the name today.

25 A. I still don't know the name. I only know

1 what I read.

2 Q. Well, you know the name?

3 A. As far as I know, that could or could not be
4 the name.

5 Q. So you just might be guessing?

6 A. Just as much as you are.

7 Q. But you held yourself out as an instructor,
8 did you not?

9 A. No, sir.

10 Q. In your correspondence to Mr. Atwood, didn't
11 you say you were his instructor?

12 A. Yes, sir.

13 Q. And that Mr. Atwood was your probationer?

14 A. No, he was not.

15 Q. Didn't you tell him that that's what he would
16 be?

17 A. No, sir.

18 Q. Did you instruct him as a probationer?

19 A. I instructed him in his studies in the
20 instructions handed out by the order in its books.

21 Q. Well, in your letter, did you write a letter
22 to him on December 12 -- and I don't know, you'll have to
23 help me here Mr. Bernsienne, because you use Roman
24 numerals. LXXVII. What year is that?

25 A. '77.

1 I don't know how else to do it.

2 MR. BLOOM: I'm sorry, this we should have gotten
3 Your Honor a copy so you could just follow, see the lines
4 and make your ruling from the bench. That would be the
5 proper way to do it. I apologize for not doing that.

6 THE COURT: That's not feasible.

7 (The following proceedings were held in open
8 court with counsel, the defendant, and the jurors
9 present.)

10 THE COURT: The objection is overruled as to this
11 particular question.

12 Q. BY MR. BLOOM: Referring to the June 30,
13 letter, 1983, Mr. Bernsienne, did you write as follows:
14 Do what thou witness shall be the whole of the law. As
15 you no doubt know by now, your instructor has been engaged
16 in the affairs of a retirement.

17 Did you say that?

18 A. I may have. I'm not looking at the letter,
19 you are.

20 THE CLERK: Defendant's AAAO.

21 MR. BLOOM: May I approach the witness, Your
22 Honor?

23 THE COURT: Yes.

24 Q. BY MR. BLOOM: Show you what's marked AAAO,
25 Mr. Bernsienne.

1 THE COURT: Three A's.

2 Q. AAAO. If you can please look at that.

3 A. Yes.

4 Q. And can you tell us what that is?

5 A. What?

6 Q. What you have in your hand.

7 A. It's a letter.

8 Q. Written by whom?

9 A. Myself.

10 Q. And can you read the first two and a half
11 lines to yourself?

12 A. Yes.

13 Q. Did I just read that out?

14 A. Yes.

15 Q. Did you say that?

16 A. Yes.

17 Q. Mr. Bernsienne, is your Social Security
18 number 579-56-2265?

19 MR. DAVIS: Objection; irrelevant, Your Honor.

20 THE COURT: Objection is overruled.

21 THE WITNESS: Yes.

22 Q. BY MR. DAVIS: Born on January 6, 1944?

23 A. Yes.

24 Q. Do you remember when we spoke on November 6
25 and 7, and I asked you if you had ever been arrested?

1 A. Yes.

2 Q. And you told me you had not, except for a
3 traffic ticket?

4 A. Yes.

5 Q. Okay.

6 And then on page 41, I asked you again if you
7 had ever had any arrests, you told me you had not, is that
8 correct?

9 A. I don't know what page it's on, you are
10 reading it. I've never seen whatever it is you're reading
11 from.

12 Q. Do you recall that on at least three
13 occasions that I asked you if you've ever been arrested?

14 A. I don't recall how many times you asked it.

15 Q. But no matter how many times I asked you,
16 your answer would be no?

17 A. It may have been.

18 Q. You mean it could have been something else?

19 A. I don't know.

20 Q. Well, you ought to know now if you've ever
21 been arrested before, even as you sit here now?

22 A. Yes.

23 Q. And the answer would be no?

24 A. No.

25 Q. Is the answer no, I'm sorry?

1 A. I don't know what you're asking me.

2 Q. Have you ever been arrested?

3 A. Yes.

4 Q. You have. For what?

5 A. Bumped up charges. I don't know what the
6 charge was in either case. Furthermore, it was thrown
7 out.

8 Q. Let me see if I get these questions so we get
9 it clear what you were asked when I interviewed you on the
10 6th. I take it you were telling me the truth at the time?

11 A. I made it a point whatever you were trying to
12 dig up behind me.

13 Q. My question was --

14 A. You're the one that wants to dig it up again.

15 MR. BLOOM: Please, Your Honor, I don't want to
16 quarrel.

17 THE COURT: Mr. Bernaienne, this is going to be
18 much prolonged if you don't answer the questions.

19 At this point, it is relevant, he is going to
20 ask you, he is going to quote to you at this point the
21 question asked of you then and answer given by you then,
22 and ask you if you recall giving that answer. Would you
23 listen to it carefully, please, and then answer it.

24 Q. BY MR. BLOOM: This is on page 31 of November
25 6, 1985.

1 "QUESTION: Have you ever been arrested in
2 your whole life?"

3 Let me finish my question so you'll get a
4 right, clear answer.

5 "Have you ever been arrested for anything
6 in your whole life at any time? I don't care
7 what it's for.

8 "ANSWER: No.

9 "QUESTION: No?

10 "ANSWER: No.

11 "QUESTION: Not even for a traffic
12 violation. Were you ever stopped by the
13 police?

14 "ANSWER: I got a ticket once."

15 Is that what you told me?

16 A. Yes.

17 Q. Was that the truth?

18 A. It was then, 'cause I didn't remember.

19 Q. Page 41, were you asked this question, did
20 you give this answer later on?

21 MR. DAVIS: Objection, Your Honor; it's
22 irrelevant at this point, it's been asked and answered.

23 THE COURT: Same subject matter, Mr. Bloom?

24 MR. BLOOM: Yes, but at a later time, Judge.

25 THE COURT: Objection is overruled. You may

1 proceed.

2 Q. BY MR. BLOOM: Question. Now, I ask you
3 again about being arrested. You remembered some traffic
4 ticket you had in Baltimore.

5 "Were you ever arrested anywhere else in
6 these United States?

7 "ANSWER: No."

8 Did you say that?

9 A. Yes.

10 Q. Was that the truth?

11 A. Yes.

12 Q. You were never arrested anywhere else in the
13 United States?

14 MR. DAVIS: Objection; asked and answered.

15 THE COURT: Objection overruled.

16 Your answer, Mr. Bernsienne.

17 THE WITNESS: The time you asked me, I didn't
18 remember. I told you I put it behind me. I had forgotten
19 it.

20 Q. BY MR. BLOOM: Do you remember now?

21 A. Yes.

22 Q. When was the first time?

23 A. I don't remember.

24 Q. Was there a second time?

25 A. Yes.

1 Q. Was there a third?

2 A. No.

3 Q. Do you remember what the charges were?

4 A. No.

5 MR. DAVIS: Your Honor, can I lodge my objection
6 once again to the relevancy of this line of questioning?

7 THE COURT: Yes, you may. Objection is
8 overruled. He has answered no, he doesn't remember. You
9 may ask another question, Mr. Bloom.

10 Q. BY MR. BLOOM: Was one in New York City?

11 A. Yes.

12 Q. Was it for larceny and bad check?

13 A. I don't remember what the charge was.

14 Q. Was one in Enid, Oklahoma?

15 A. Yes.

16 Q. Was that for a bogus check?

17 A. Yes.

18 Q. When Mr. Atwood first began to correspond to
19 you, did you know -- did he tell you that he wanted to be
20 admitted to this mystical order?

21 A. Yes.

22 Q. Did you tell him that you didn't know
23 anything about any mystical order?

24 A. At the time, I thought I was a member of one,
25 but I was not. The person who said I was accepted was a

1 fraud, therefore, I was not a member.

2 Q. But you thought you were?

3 A. Yes.

4 Q. And what organization was that?

5 A. The AA.

6 Q. And that was in 1980 then, right?

7 A. My membership?

8 Q. No, the fact that you believed you were a
9 member in 1980.

10 A. Yes.

11 Q. When did you learn that you really weren't a
12 member?

13 A. In 1981.

14 Q. Did you continue on with the organization in
15 some real fashion then?

16 A. There was nothing to continue on with.

17 Q. Well, there was a -- there was an
18 organization, was there not?

19 A. Perhaps.

20 Q. Did you continue to still write to Mr. Atwood
21 about the organization and its tenets?

22 A. Yes.

23 Q. Were you following the tenets of a person by
24 the name of Ellister Crowley?

25 A. Yes.

1 Q. Do you still live by those tenets?

2 A. Yes.

3 Q. Did you tell Mr. Atwood in the beginning that
4 you would be able to teach him about this mystical order
5 and about astrology?

6 A. I only told him I would teach him astrology,
7 anything else he would have to learn on his own. It is a
8 personal experience, not a group experience.

9 Q. How about yoga?

10 A. Personal. And that is all they are, they're
11 yoga.

12 Q. They are a lot more than that, aren't they?

13 MR. DAVIS: Objection.

14 MR. BLOOM: I will ask the witness not to offer
15 statements.

16 THE COURT: Let me correct both. One, Mr.
17 Bernsienne, don't offer statements. If there is a
18 question before you, answer it yes or no. If we need any
19 further explanation, the attorney will ask for it or I
20 will ask for it.

21 And Mr. Bloom --

22 MR. BLOOM: Yes, Your Honor.

23 THE COURT: -- proceed with another question,
24 please.

25 Q. BY MR. BLOOM: Mr. Bernsienne, did you tell

1 AAAU.

2 A. That is a code word of Frank's.

3 Q. What does it mean?

4 A. He's referring to a drug. A narcotic, as a
5 matter of fact.

6 Q. So what it says, your note on liber. L-i-a
7 was received and a complete set is south. You wrote that?

8 A. Yes.

9 Q. The narcotic drug being LSD?

10 A. I don't know what it is. I learned after the
11 fact what it was.

12 Q. You just wrote that?

13 A. Yes.

14 Q. Do you remember when I asked you some
15 questions in November, 1986? Did you lie to me about
16 your, the reason why you were not in the military?

17 A. No.

18 Q. Did you tell me that you were 4-F, and you
19 had no idea why you were 4-F?

20 A. I do remember 4-F. I didn't know 4-F. I
21 don't remember telling you I didn't have any idea. I knew
22 it was 4-F. I don't remember telling you I had no idea.

23 Q. Page 25, November 7, 1985.

24 "Weren't you called for service, or did you
25 receive an exemption?

1 "ANSWER: I received an exemption."

2 MR. DAVIS: Mr. Bloom, it's not on my page 25.

3 What are you reading from?

4 MR. BLOOM: Page 25.

5 There's a November 7 transcript. You're on
6 the 6th, I think.

7 And you indicated that you had an exemption
8 4-F, right?

9 "QUESTION: 4-F for what?

10 "They just consider I was in school.

11 "Was it a student exemption?

12 "4-F is a medical than reason.

13 "What was the problem?

14 "ANSWER: I have no idea, I really don't."

15 Did you say that to me?

16 A. None of your business, that's what it meant.

17 MR. DAVIS: Excuse me, Your Honor, I would like
18 to approach the bench.

19 THE WITNESS: Still none of your business.

20 THE COURT: You may.

21 (The following discussion was had at the
22 bench between Court and counsel, out of the hearing of the
23 jury:)

24 MR. DAVIS: Now, in terms of -- 106 says I can
25 make this objection and require him to read it, and I

1 him I was gay.

2 MR. BLOOM: That's right. That's all I'm going
3 to read. That's the reason for that, Judge.

4 THE COURT: Mr. Davis, did you want to go
5 further?

6 MR. DAVIS: No. If he reads that, that's fine.
7 But I would like to object to any further questions about
8 the military. That line of questioning is not relevant.

9 MR. BLOOM: I'm not going into that.

10 MR. DAVIS: He's going to read that.

11 MR. BLOOM: I'll read that.

12 THE COURT: Complete that.

13 (The following proceedings were held in open
14 court with counsel, the defendant, and the jurors
15 present.)

16 THE COURT: Mr. Bloom, if you would complete this
17 question.

18 Mr. Bernsienne, he's going to read a little
19 further in the transcript, the questions and the answers.
20 Listen to them and he'll ask you if you gave those
21 answers, please.

22 Q. BY MR. BLOOM: I'll read it where I started,
23 Mr. Bernsienne.

24 "QUESTION. You have no idea why they didn't
25 let you into the military?

1 "ANSWER: I believe I told them I was gay."

2 Is that true?

3 A. Right.

4 THE COURT: Mr. Bloom, I suspect you're going to
5 be a little while longer with Mr. Bernsienne.

6 MR. BLOOM: Yes, I am.

7 THE COURT: We will take our afternoon recess for
8 a few minutes right now.

9 Jurors, leave your notebooks right there.
10 Remember the admonition. We will have you back shortly.

11 (Recess taken.)

12 THE COURT: For the record, all jurors are
13 present, both counsel, Mr. Atwood and the witness still on
14 the stand.

15 Mr. Bloom, you may continue.

16 Q. BY MR. BLOOM: Mr. Bernsienne, on October 17,
17 1984, on that date, in Enid, Oklahoma, did you speak to a
18 Pima County Sheriff's deputy by the name of Pantke,
19 P-a-n-t-k-e?

20 A. Yes.

21 Q. At that time, in 1984, in September, did you
22 tell Officer Pantke, that you were a member of a hermetic
23 order?

24 A. I may have.

25 Q. Were you a member?

1 Q. Remember my asking you some questions about
2 this particular statement about he won't talk, do you
3 remember that?

4 A. No.

5 Q. In the transcript that we talked about, he
6 won't talk?

7 A. You asked me a lot of questions. I don't
8 remember exactly what it was.

9 Q. I know. But do you remember some general
10 questions about that?

11 A. Yes.

12 Q. And you remember talking about the statement
13 you made to Randy West on the 20th regarding that?

14 A. What statement?

15 Q. I'm going to read it to you. Do you remember
16 making some statements?

17 A. Yes.

18 Q. Okay.

19 Did you tell Randy West, regarding that he
20 made this statement to you, first of all, while you were
21 out there in May or June? Did you tell him that?

22 A. No.

23 Q. And then he asked you on page two: "Of what
24 year?"

25 And you said, "Of this year."

1 Answer: This year.

2 "And then did you tell him," question.

3 And your answer: "He told me a lot of
4 things, they were all disconnected. I, after
5 sitting there about it, he had this thing for
6 rock concerts. I don't know what really he
7 said exactly but that was -- I know he was
8 carrying on a relationship of some kind with a
9 kid in Connecticut. He had been doing it by
10 letter, and it was going on while he, I think
11 this fell was under 20 years old, I'm not sure
12 what his age is right now, he's close to 20
13 years old. He didn't say anything that I
14 remembered clearly until after I got to
15 California. He had a series of run-ins with
16 his parents, and he called me and told me that
17 he had a conclusion of one altercation he had
18 with him, that he had a series of problems
19 going on with a kid and making sure this time
20 the kid wouldn't talk."

21 Did you say that?

22 A. No. That's completely mixed up.

23 Q. Let me direct your attention to page, on the
24 transcript of November 7, 1985 , and I asked you some
25 questions about the young man that Mr. Atwood was

1 contacting in Connecticut, and there was a conversation
2 about that. And I think we'll go to page 29, Mr. Davis.

3 And in reference to that, were you asked this
4 question, did you give this answer.

5 MR. DAVIS: Which 29?

6 MR. BLOOM: Bottom of 29 of November 7.

7 Q. In reference to the child in Connecticut.

8 So that's why you said that when we asked
9 about what did he say what he was going to do with the
10 kid, and you say, I think he meant him harm, I'm sure.
11 But that's in reference, it appears when you're talking
12 about the specific kid in Connecticut.

13 "ANSWER: I think I made the comment to him
14 that I suspected Frank was lying about the boy's
15 age. He gave me that age that was in the teens,
16 I remember telling this is a boy, not a young man
17 of 19."

18 Did you say that?

19 A. I don't remember.

20 Q. At the preliminary hearing, you were asked
21 this question by Mr. Davis that you recited to us in court
22 today, is that correct?

23 A. What statement?

24 Q. About this time the child won't talk.

25 A. Yes.

1 Q. When you testified at the preliminary
2 hearing, you didn't say child, did you?

3 A. I believe I used the word kid.

4 Q. And you referred to this one particular call,
5 isn't that right?

6 A. Yes.

7 Q. And then when you were asked by, on September
8 20, on page 12, you were asked this question on the bottom
9 of page 12 on the interview with Detective West, when
10 Mr. Blakeley was also present, and you were asked the
11 question about, has he ever threatened violence towards
12 children.

13 Remember that?

14 A. I don't remember it.

15 Q. And you said, "Only that one time. He talked
16 to me after, during June when he came up here."

17 Is that correct? Did you say that?

18 A. I don't remember saying that.

19 Q. Well, did you say to the police, the Enid
20 Police Department, that you had only spoken -- you only
21 heard this statement about this time he won't talk, and
22 that's what you told them, isn't that right?

23 A. Yes.

24 Q. That you only heard that statement once,
25 isn't that what you told the Enid Police Department?

1 A. In reference to that telephone conversation,
2 yes.

3 Q. That particular statement I'm talking about
4 now?

5 A. Yes.

6 Q. And then you -- but you didn't tell them, you
7 now say it wasn't in Los Angeles, it was in the phone
8 call, right?

9 A. (Nodding.)

10 Q. And then when I spoke to you, you then said,
11 we started a question about where it took place, remember
12 that?

13 A. What took place?

14 Q. Whether it took place in Los Angeles, whether
15 it took place on the phone.

16 A. How could it take place in L.A., when I was
17 in Enid, he was somewhere else. And furthermore, you have
18 the phone bill to prove it.

19 Q. But you were in Los Angeles at one time, were
20 you not?

21 A. Yes.

22 Q. And you did drive around with him, didn't
23 you?

24 A. Yes.

25 Q. But as I say --

1 A. We had similar conversations, but that
2 statement, to my knowledge, did not come up until the
3 night he told me on the telephone he had had the fight
4 with his parents.

5 Q. Yes. And you didn't tell that to the Enid
6 Police Department that it came up in Los Angeles, that's
7 correct, right?

8 A. That statement did not come up in Los
9 Angeles, to my knowledge.

10 Q. And you're saying it happened now on this
11 phone call?

12 A. I've always said that's where it happened.

13 Q. And then when I spoke to you, you said that
14 same statement may have come up at another time?

15 A. The subject came up, not the statement.

16 Q. You told me that same subject.

17 THE COURT: Don't talk at the same time, please.

18 Mr. Bernsienne, had you finished your answer?

19 THE WITNESS: No.

20 THE COURT: Please do.

21 THE WITNESS: It was in reference to his liking
22 for children that we talked a great deal. A threat of
23 violence he made to me once on the telephone.

24 Q. BY MR. BLOOM: Did you not tell me that that
25 statement had, that particular statement had come up?

1 A. No.

2 THE COURT: Let him finish the question,
3 Mr. Bernsienne.

4 Q. BY MR. BLOOM: Many times?

5 A. The subject came up.

6 Q. Just yes or no.

7 A. The subject of sex with children came up many
8 times.

9 THE COURT: Mr. Bernsienne, the question is that
10 particular quoted statement. Did you say that that had
11 come up before?

12 THE WITNESS: No.

13 Q. BY MR. BLOOM: Page 33 of the transcript of
14 November 7, 1985, were you asked these questions, and did
15 you give these answers, Mr. Bernsienne?

16 "QUESTION: So we don't really have --"

17 MR. DAVIS: Which 33?

18 MR. BLOOM: November 7, 1985.

19 Q. "QUESTION: So we don't really have even
20 questions about times, dates and places, but
21 what we're talking about is that he may have
22 said this to you about that he would make sure
23 that they would not talk. That may have
24 occurred numerous times, stated by Frank?

25 "ANSWER: Yes."

1 Did you say that?

2 A. I don't remember.

3 Q. "QUESTION: By that, I'm talking about,
4 you know --

5 "ANSWER: The one I really took him
6 serious on was the telephone call.

7 "QUESTION: Okay.

8 "ANSWER: It was the tone of voice and
9 the fact that he was so very upset at the time.

10 "QUESTION: Because of his parents.

11 "ANSWER: And I have seen him in that
12 mood before. But when he put that line to me
13 in that mood I got worried, I got worried,
14 really worried.

15 "QUESTION: This would be when now, what
16 month are we talking about?

17 "ANSWER: June.

18 "QUESTION:" Middle of the page. "Since
19 you've known him --"

20 MR. DAVIS: Mr. Bloom, would you finish that
21 answer, please.

22 MR. BLOOM: June. When he called me in June,
23 that's when I worried.

24 "QUESTION: Since you've known him, where
25 you've actually spoke to him as opposed to

1 writing, how many times do you think he may,
2 I know you can't put a 12 or 18, but how many
3 times do you think that Frank, by way of his
4 conversation, intimated to you, even said the
5 words that 'I can't handle this, I'll make sure
6 they don't talk this time,' or 'they won't
7 talk'? You know, when it would come up.

8 "ANSWER: I can't even venture a guess. As
9 I said, the one I took him really seriously is
10 the one I remember when he called up in June.
11 We had so many conversations."

12 Then we go on.

13 "ANSWER: I can't put --" on page 35. "I
14 can't put a number."

15 MR. DAVIS: Finish that answer.

16 Q. BY MR. BLOOM: Yes, something like that.
17 It's said in different words and different ways.

18 MR. DAVIS: Excuse me. I meant the bottom of 34.

19 MR. BLOOM: About either in his room or at his
20 outside pool.

21 MR. DAVIS: Yes. I think you stopped reading
22 after June period.

23 MR. BLOOM: That's right. I did.

24 I'm going to the next page. We had so many
25 conversations. Either in his room or in his outside pool.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

STATE OF ARIZONA,

Plaintiff,

vs.

FRANK JARVIS ATWOOD,

Defendant.

CR 14065

Phoenix, Arizona
March 3, 1987
A.M. Session

BEFORE: The Honorable John G. Hawkins

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Prepared for Appeal

COPY

Janet Babicky
Court Reporter

1 Q. Did you correspond?

2 A. I don't recall whether I wrote any letters to
3 him. I don't believe I did. I don't recall.

4 Q. Let's see if I can refresh your memory.

5 Did you write him a letter on June 12?

6 A. If you're looking at one, I must have.

7 Q. Did you tell him on June 12 -- and this would
8 be LXXX, which would be 1984, correct?

9 A. Right.

10 Q. "Do what thou wilt shall be the whole of the
11 law. I know I've said this before, but I've got it so bad
12 that I'm going to say it again. I miss you. A lot. I
13 have been lonely before. That's a good word for it, but
14 I've not felt this kind of lonely in a very long time.
15 I've told you before that I do not use the word love
16 lightly or often, but when I do, be assured I mean it. I
17 know I've said it to your face to face several times
18 before. I can now put it in writing without having to
19 withhold it from crying eyes. I love you. I become
20 sexually aggressive and passive towards the man I can say
21 that to. I hope my aggressiveness was not too much of a
22 turn-off, as I was not only expressing how I feel about
23 you, but also letting you know that you are safe with me
24 and you can express all of your desires with me. I also
25 realize it was awkward being at your parents' home. For

1 all my experience I was not without my own little set
2 blocks, and will need your reassurance and security. I
3 want this union between us and hope you feel as strongly
4 about it as I. I want to form that special link that
5 exist only in the magnetism between two lovers with you.
6 I want to love you, I want to be loved by you. I want
7 to," and you used the F word here you, I want to be "F'd
8 by you. I want to taste and smell every beautiful inch of
9 you."

10 You go on to describe your feelings about
11 him.

12 Did you say that to him?

13 A. I don't remember writing that letter.

14 Q. Did you tell him also on the 12th that they,
15 that his parents, are convinced that you somehow have a
16 great deal of influence over Mr. Atwood? Did you talk to
17 him about that?

18 A. I remember that as true. His parents did
19 have that idea that I did. That is why they brought me to
20 L.A. to begin with.

21 Q. That's my question. Is that true?

22 A. That's why they brought me to L.A. That is
23 why they corresponded.

24 Q. There's no question --

25 THE COURT: Mr. Bernsienne, don't add things,

1 please. Just listen to the question and answer it.

2 Q. BY MR. BLOOM: Did you further write in this
3 letter: "And there is a man out here that loves you,
4 desires you, wants a life with you to share and grow in.
5 He is more than willing to prove it by pulling up stakes
6 and putting down there with you."

7 Did you write that?

8 A. No, sir.

9 Q. Excuse me?

10 A. No, sir.

11 THE CLERK: AAAW.

12 MR. BLOOM: May I approach the witness, Your
13 Honor?

14 THE COURT: Yes, you may.

15 Q. BY MR. BLOOM: Show you what has been marked
16 AAAW, ask you to look at that, please, to yourself.

17 A. The most important thing is missing, and
18 that's my letterhead, so I didn't write it. I would have
19 written it on my own letterhead. That is not my letter.

20 Q. Is that your signature?

21 A. It looks like it.

22 Q. Did you read the letter?

23 A. Yes.

24 Q. All of it?

25 A. Yes.

1 Q. Did you tell Randy West that you were hurt,
2 quote, I quote this now, you were hurt and offended?

3 MR. DAVIS: Where, Mr. Bloom?

4 MR. BLOOM: What?

5 THE COURT: Quoted from what, Mr. Bloom?
6 Something to which you refer?

7 MR. BLOOM: I'm going to finish this statement,
8 if I could, Judge.

9 THE COURT: Show Mr. Davis what it is that you're
10 using.

11 MR. BLOOM: I thought I could just ask the
12 question, Judge.

13 THE COURT: Please do that for me, Mr. Bloom.

14 MR. BLOOM: Yes, Judge.

15 This is in reference to a statement of Randy
16 West, Your Honor, it was taken on November 7, 1985.

17 MR. DAVIS: Objection; improper impeachment, Your
18 Honor.

19 THE COURT: Want to bring it up, Mr. Bloom, and
20 let me take a look at it?

21 Jan, if you will join us, please.

22 (The following discussion was had at the
23 bench between Court and counsel, out of the hearing of the
24 jury:)

25 THE COURT: Can I see it?

1 MR. BLOOM: Judge, my question is simply going to
2 read Randy West, such and such. If he does, then I will
3 impeach him with Randy West. I don't have his statement
4 to say that, I have Randy West. I thought I have a right
5 to just ask that question. I thought we agreed, you know,
6 you keep saying transcript, and that's why I don't
7 understand what's going on.

8 THE COURT: All I ask, Mr. Bloom, you give
9 Mr. Davis some indication of your source. I don't know
10 your source, 'cause I don't have any of this before me.

11 MR. BLOOM: I don't think I have to.

12 THE COURT: You have given him your source and
13 that is the interview of Randy West, is that correct?

14 MR. BLOOM: But, Judge, I don't think I have to
15 give him the source. All I have to say, did you tell
16 Randy West such and such, and then if I don't prove it
17 with Randy West, then it goes out. I don't have to give
18 the page and citation.

19 THE COURT: That's correct, Mr. Bloom, you don't
20 have to. I've asked you to do that this time so I know
21 there is some basis, so we know you aren't just creating
22 this, okay? Now, you've done that, Mr. Davis what
23 objection do you have?

24 MR. DAVIS: I object. Mr. Bloom said, and I
25 quote, there's no quotation. Randy West was not quoting

1 Mr. Bernsienne. It's obviously some conclusion or
2 speculation that he had. I would object to the form of
3 the question.

4 THE COURT: Objection is overruled.

5 You may proceed.

6 (The following proceedings were held in open
7 court with counsel, the defendant, and the jurors
8 present.)

9 Q. BY MR. BLOOM: Mr. Bernsienne, did you
10 indicate to Randy West that you were hurt and offended
11 that Atwood would come to Enid, Oklahoma and bring another
12 person with him?

13 A. I don't remember saying that.

14 Q. Did you indicate to Mr. West that you were
15 jealous of the fact that Mr. Atwood brought Mr. McDonald?

16 A. There was nothing to be jealous of.

17 Q. Your answer is no?

18 A. No.

19 Q. Did you indicate to Randy West that you had
20 been lovers, and now you had had a quarrel and that's why
21 you were in the Police Department reporting him?

22 A. No.

23 MR. DAVIS: Your Honor, can I approach the bench?

24 THE COURT: Yes, of course. We need the
25 reporter, I presume we do.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

STATE OF ARIZONA,)	
)	
Plaintiff,)	
)	
vs.)	CR 14065
)	
FRANK JARVIS ATWOOD,)	
)	
Defendant.)	
-----)		

Phoenix, Arizona
February 18, 1987
A.M. Session

BEFORE: The Honorable John G. Hawkins

REPORTER'S TRANSCRIPT OF PROCEEDINGS

Prepared for Appeal

(C)(C)PY

Janet Babicky
Court Reporter

1 A. I was on my way back. I had already been
2 there. I was on my way back.

3 Q. So you would have been going south past the
4 car towards Ace Area?

5 A. Yes, and I was going back when I sighted him
6 the second time.

7 Q. So you went to Ace Area, and it was again on
8 the return trip to your yard that you saw him again?

9 A. Right.

10 Q. Approximately what time, if you know, was it
11 when you saw the person again?

12 A. It was 3:30, 4:00, somewhere around there.

13 Q. Tell the jurors what you saw at that time.

14 A. I noticed him again -- the first time I saw
15 him in the school zone, and I saw the California plates,
16 and I saw the long hair, and I was thinking to myself, he
17 just don't fit the area. He just don't look right. And I
18 thought to myself, I justified it in my mind, saying,
19 well, there must be a rock concert or something, because
20 this guy, you know, just wasn't right for the
21 neighborhood. That was my opinion.

22 Q. So when I saw him the second time, I saw him
23 with a small person in the car, and it was a little
24 farther down the street, and when I saw him, you know, it
25 was just like it stood out again, "My God, there he is

1 again," and I saw this small person in the car. When I
2 justified it in my mind, I thought, well, maybe he's a
3 divorcee and he was here picking his daughter up and
4 everything is fine, because he was smiling, and it seemed
5 like everything was wonderful, and it just cleared out of
6 my mind then.

7 Q. What can you tell the jurors about the small
8 person, if anything?

9 A. I estimated the age about 10 years old. The
10 person was leaning forward and had dark hair, and that's
11 the only thing I can describe.

12 Q. Do you know how long the hair was?

13 A. It was short. It was short dark hair.

14 Q. Okay.

15 Q. Would you step to the diagram maybe again,
16 Mike, and show the jurors where you saw the person the
17 second time with the child?

18 A. Right here, right about this fourth -- here's
19 the school crossing again, and right about where these
20 apartments are, saw him right about in here in between
21 this third and fourth building right in here (indicating).

22 Q. What direction was he going?

23 A. South.

24 Q. You can have a seat again there.

25 Q. Mike, the events you've been telling the jury

1 about happened on the 17th of September, 1984; is that
2 right?

3 A. Um hum.

4 Q. Do you recall what you did on the 18th of
5 September, 1984?

6 A. A Caterpillar, the Empire dealer flown a
7 bunch of contractors from all over the western United
8 States to the Peoria plant in Illinois to tour their
9 factory.

10 Q. And how long did you -- how long were you out
11 of town on that tour?

12 A. I was gone 18th, 19, 20, and 21.

13 Q. When you returned to Tucson, did you learn
14 through the news media that there may be some significance
15 to what you had seen on the 17th?

16 A. That's right, correct.

17 Q. Tell the jurors what you did when you found
18 that out.

19 A. I contacted my neighbor, who's with the FBI.

20 Q. And what's your neighbor's name?

21 A. Larry Bagley.

22 Q. And what did -- did Larry make some
23 arrangements for you to meet somebody?

24 A. No. He just said to me that they'll be
25 getting in touch with you.

JANET MARICRY - SUPERIOR COURT

1 Q. Did somebody get in touch with you?

2 A. Yes, about two weeks later, contact with a
3 detective named Keefe.

4 Q. Did you know he was coming to see you when he
5 came to see you?

6 A. No.

7 Q. Where were you when he came to see you?

8 A. At our construction yard.

9 Q. Did you tell Keefe everything that you were
10 able to tell the jury today?

11 A. No.

12 Q. What did you tell Keefe at the time he came
13 to see you?

14 A. That I saw a black 2 car in the school zone
15 at that same time, and the guy I saw in it was real
16 grungie looking, and the car looked dirty, and that was
17 about it.

18 Q. What did you neglect to tell him at that
19 time?

20 A. About the second sighting.

21 Q. Describe the circumstances of that interview
22 to the jury, please.

23 A. Well, I didn't know. It was a surprise,
24 because I was in our office, and my job is out in the
25 field. I coordinate all the people in the field to do

1 various things, and that's enough to pull your hair out
2 right there, but anyway, when I was inside the office, and
3 I was leaving the office, and he approached me in the
4 yard, and all of a sudden he identified himself being with
5 the FBI, and I just all of a sudden, oh. That wasn't my
6 idea what an FBI guy was. He showed me his badge, and he
7 asked me what did I see over in the school zone, and I
8 told him at the time. And I was in a hurry.

9 I cut it short, and I left.

10 Q. Later, did you see any photographs or
11 videotape in the media that you recognized?

12 A. Yes, I did.

13 Q. Tell the jury about that, please, if you can
14 tell them when that was, if you know?

15 A. It was either late September or October when
16 they showed the car and the guy, the driver of the car,
17 and it fit the description of the person that I saw at
18 that time in that area.

19 Q. When you saw that on the media, did you have
20 any feeling of recognition or identification?

21 A. Well, I really couldn't see the face -- just
22 one quick -- where you kind of give it one of those
23 (indicating). It just didn't register, but the hair and
24 the car just fit together.

25 Q. Now, Mr. Young, do you see the person in the

1 courtroom today that you've been telling the jury about?

2 A. Yes.

3 Q. Would you identify him for the jury, please?

4 A. Guy in the blue sports coat.

5 Q. Now, at a prior court proceeding, did you
6 have an opportunity at that time to try and recognize and
7 identify someone?

8 A. That was the first time I've seen him since I
9 observed him in the school zone.

10 Q. And on that occasion, did you know that he
11 was going to be in the courtroom on that day?

12 A. No, I didn't.

13 Q. Did you know that you were going to be called
14 upon to recognize and identify him that day?

15 A. No, I didn't.

16 Q. What's different about the person now as
17 compared to when you saw him in front of Homer Davis
18 School on those two occasions?

19 A. A big difference.

20 Q. Tell the jury about that.

21 A. His hair. He had a mass, mass of hair. Like
22 I said, that's what got my attention originally. It was
23 the hair. I just didn't believe you could put that much
24 hair on somebody's head. That's what got my attention.
25 And the heavy eyebrows, dark eyebrows, and the chin.

1 Something about the chin stuck out. I don't know why I
 2 saw it, and something went wham. Something seemed to me
 3 that was out of proportion or something about the chin.

4 MR. DAVIS: Thank you very much.

5 I have no further questions of Mr. Young.

6 THE COURT: Mr. Bloom?

7

8

CROSS-EXAMINATION

9 BY MR. BLOOM:

10 Q. Good morning, Mr. Young.

11 A. How are you doing?

12 Q. May I proceed, Your Honor?

13 THE COURT: Certainly, whenever you're ready.

14 Q. BY MR. BLOOM: Mr. Young, let's see now. You
 15 said you were going to Ace Arco and going to rent some
 16 equipment?

17 A. Correct.

18 Q. And then you left Ace Arco to return back to
 19 your place of employment?

20 A. Right.

21 Q. Okay.

22 Now, sometimes you sign-in and sometimes you
 23 sign-out in your place of employment; isn't that right?

24 A. Yes.

25 Q. On this day, there were no sign-ins or

1 Q. A little after 4:15, right?

2 A. Right.

3 Q. Now, you say that this person, when you
4 looked at the person, the person smiled?

5 A. The driver smiled.

6 Q. Yes. So you saw the driver's face at that
7 point, didn't you?

8 A. Yes.

9 Q. And you had to see the person -- did you see
10 the teeth?

11 A. Kind of.

12 Q. You saw the lips?

13 A. Yes.

14 Q. And you later described those lips, didn't
15 you?

16 A. No.

17 Q. You never described the lips at all as being
18 thin or thick?

19 A. Never.

20 Q. But when you looked at the lips, did you just
21 look at the lips themselves?

22 A. I saw his face was smiling.

23 Q. Could you see just a tad above the lip?

24 A. I didn't study.

25 UP. DAVIS: Objection; asked and answered.

1 THE COURT: Objection overruled.

2 Q. BY MR. BLOOM: I'm sorry?

3 A. I didn't study. I didn't make a big issue
4 out of his smiling. Like I said, I related to him picking
5 up his daughter or young person, and he was smiling. He
6 turned. He was smiling. In my mind, I justified
7 everything was all right.

8 Q. Well, just a minute. You said picked up his
9 daughter?

10 A. I made a mistake, small or --

11 Q. So it wasn't -- you don't know if it was a
12 male or female?

13 A. What was a bad, I shouldn't have used that
14 word.

15 Q. That was a slip again, wasn't it?

16 A. That sure was. I'm sorry.

17 Q. And what about now, I'm going to ask you to
18 answer my question, if you could, please. Was there
19 anything preventing you from seeing, as he smiled, his
20 upper lip?

21 A. When he --

22 Q. Was there? Go ahead. Please explain.

23 A. He was, had his hand, his right hand over and
24 his head was turned like this, and when he was coming
25 around, he raised his head like that and I saw the smile.

1 That's all I saw.

2 Q. So you could see --

3 A. No. I don't recall. I don't recall. I
4 don't see anything there, I'm sorry.

5 Q. Please.

6 You could see his upper lip and his chin,
7 couldn't you, at that time?

8 A. I saw him smiling.

9 Q. You could see his upper lip and his chin at
10 that time, couldn't you?

11 MR. DAVIS: Objection; asked and answered.

12 THE COURT: Objection sustained.

13 Mr. Bloom, he has no recall of what he saw
14 reference the upper lip and the chin, and you can ask it a
15 dozen times, and he'll still have no recall.

16 Can we move on to a new area, please?

17 Q. BY MR. BLOOM: Is there any reason why you
18 don't have any recall of that?

19 A. I just saw him smiling, and I figured, like I
20 said before, he was happy, and everything, my mind,
21 everything kind of fit in place the way I justified it.

22 Q. When you spoke to Detective Dhaemers in July,
23 you said that the --

24 MR. DAVIS: Excuse me, what page?

25 MR. BLOOM: Four.

1 O. That the person was a girl, didn't you?

2 A. I said a small person.

3 O. You said it was a female, didn't you?

4 A. No.

5 MR. DAVIS: I would like the question and answer
6 read, Mr. Blood.

7 MR. BLOOD: Mr. Davis, you proceed as you like.
8 I would have an objection, please. Make it to the Court.

9 THE COURT: Mr. Davis, you will have a chance to
10 come back or redirect on all of this if you wish. You may
11 read that portion of the transcript, or Mr. Dhaemers will
12 be testifying. You can ask him about it.

13 O. BY MR. BLOOD: Question, page 4. And if,
14 "Correct me if I'm wrong" --- this is Detective Dhaemers
15 asking you the question -- "You said" -- and was Mr. Davis
16 there, too?

17 A. Yes.

18 O. "Correct me if I'm wrong. You said
19 that it was approximately an hour to an
20 hour and a half from the 2:30 time from
21 the 2:00 to 2:30 time. Could you tell me
22 again what you saw at that time?

23 "Okay. We've been doing a lot of
24 business in that area. We're doing a lot
25 of dirt work, and I'm always back and forth,

1 'cause their office is right there.

2 "And I also recall seeing him again,
3 and he was heading south the same -- almost
4 same situation, but he was a little bit
5 further south on Romero than the first
6 time I saw him. And what the first -- that
7 struck me, first thing that struck me was
8 I see that there was a, like, he was the
9 same person was driving, and there was a
10 smaller person, like a child, in the
11 passenger's seat. And the child was
12 leaning forward, and he was looking,
13 looking over towards where she was leaning,
14 and he had a kind of like smile on his face."

15 Q. Did you say that?

16 A. Evidently I did, but I couldn't justify --
17 later when you talked to me, I said it was a small child,
18 sorry.

19 Q. Later you said it could have been even a boy;
20 isn't that right?

21 A. Yes, that's right. Child.

22 Q. You didn't see the driver, according to you,
23 touching this person at all, did you?

24 A. No.

25 Q. Didn't have their arm around the person in

1 any way?

2 A. No.

3 Q. Could you see if the person's -- the smaller
4 person's hair was red?

5 A. It was dark color.

6 Q. You can't say it was red?

7 A. No, I can't.

8 Q. And, of course, you say you had just a split
9 second to see the other person; is that correct?

10 A. Correct.

11 Q. And by "smaller person," you can't even tell
12 if it was a child, can you?

13 A. Yes, I could.

14 Q. You just saw a smaller child?

15 A. Smaller person, right.

16 Q. And the person was leaning forward?

17 A. Leaning forward.

18 Q. Up on the seat?

19 A. Sitting in the seat, leaning forward.

20 Q. As you passed the vehicle, were the windows
21 open?

22 A. Open.

23 Q. Of the other vehicle?

24 A. Of the other vehicle.

25 Q. Did you hear any noise emanating from the

1 give the jury of the time that you were exiting off the
2 interstate onto Ina Road?

3 A. I guess about twenty -- twenty to 4:00, right
4 around there.

5 Q. And which way do you go off of Ina to go to
6 your apartment?

7 A. I go east.

8 Q. Okay.

9 Q. Did you have some trouble before with east
10 and west when you testified?

11 A. Yes, I did.

12 Q. You know now where the sun sets; is that
13 correct?

14 A. Yes.

15 Q. As you were driving east on Ina Road, did you
16 notice something that you can remember to tell the jury
17 about?

18 A. Yes, I did. I seen a nice looking car. It
19 was coming towards me, and I always look to see if there's
20 a pretty girl in there, and I glanced over, and there was
21 a guy -- looks like he was getting a little rough with a
22 kid, because he pulled her back in the seat with one arm,
23 and it sort of caught my eye, and I watched him.

24 Q. Where was this on Ina Road, if you can tell
25 the jury?

1 A. It was a 260Z.

2 Q. Did you notice anything about the license
3 plates?

4 A. They were California plates, blue with gold
5 lettering.

6 Q. Did you notice anything else in the car
7 except the two people that you've told the jury about?

8 A. When I looked through the back mirror, it
9 looked like the back of it was packed, maybe covered with
10 a blanket or something.

11 Q. When you drove past the person driving the
12 car that you've just described to the jury, did that
13 person look at you?

14 A. Yes, he did.

15 Q. Can you describe that to the jury?

16 A. Okay.

17 At the time he noticed me looking in the car,
18 and he pulled forward towards the windshield, sort of
19 gritted his teeth, and just stared at me, and we looked
20 eye to eye.

21 Q. What kind of vehicle were you driving?

22 A. I was driving a '74 Ford pickup.

23 Q. Was your vehicle higher than the Datsun car
24 that you've just told the jury about?

25 A. Yes, it was.

1 Q. What can you tell the jurors about the child,
2 if anything?

3 A. The child had short hair, and it was --
4 wasn't a very big child. Not a whole lot.

5 Q. Is that all you can tell the jurors about the
6 child?

7 A. Yes.

8 Q. Okay. What can you tell the jurors about the
9 person that was driving the car?

10 A. He had a beard. His hair was pulled back
11 into a ponytail. It was tied back with something, and
12 that's about it.

13 Q. Okay.

14 Now, did you go, then, after passing this car
15 and just drive on and go back to your apartment?

16 A. Yes.

17 Q. Did you learn later that there might be some
18 significance to what you had seen?

19 A. Yes, I did.

20 Q. And did you learn that on the 17th of
21 September, 1984?

22 A. Yes, I did.

23 Q. What action did you take on the 17th of
24 September, 1984?

25 A. When I heard that something had happened and

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PINA

THE STATE OF ARIZONA,

Plaintiff,

vs,

FRANK JARVIS ATWOOD,

Defendant.

NO. CR-15397
CR-14065

Tucson, Arizona

May 14, 1986

BEFORE: The Hon. John G. Hawkins

APPEARANCES:

John E. Davis, III
appearing for the Plaintiff

Stanton Bloom
appearing for the Defendant.

PRE-TRIAL HEARING

Michael Moore
Official Court Reporter
Pima County Superior Court
Tucson, Arizona 85701

SUPERIOR COURT PIMA COUNTY

02-FJA007398

1 A. No. She agreed to meet with us.

2 Q. When you spoke to Nora Wilson, did you have
3 the pleasure of meeting her dog, Andy?

4 ~~Yes, there was a dog. I wasn't introduced.~~

5 Q. What kind of dog was it?

6 A. As I recall, a small dog. I really don't
7 know what breed or type of dog.

8 Q. I don't know what she said about -- was it
9 eight inches -- something like eight inches off the
10 ground, a little tiny dog?

11 A. Yes.

12 Q. Did Nora Wilson ever tell you that she saw
13 a license plate on the vehicle that she observed that
14 day?

15 A. There was a point where she mentioned a
16 license plate, yes.

17 Q. Could she give you any numbers on the
18 plate?

19 A. No.

20 Q. Was the only thing about the plate she
21 could give you was it was white?

22 A. Yes.

23 Q. Did she give you any other coloring on the
24 plate?

25 A. No.

1 Q. Now, did she ever give any indication to
2 you that the plate was obscured from her vision the
3 whole time she was able to observe the plate because her
4 little dog was blocking her vision?

5 A. No.

6 Q. Did Nora Wilson ever indicate to you that
7 ~~she saw the vehicle on two separate occasions?~~

8 ~~Answer: Yes.~~

9 Q: ~~Did she tell you on the second occasion~~
10 ~~that she was able in any way to look inside the vehicle?~~

11 ~~Answer: I don't recall her being specific about~~
12 ~~seeing inside the vehicle.~~

13 Q. Don't you indicate in your report that on
14 the second sighting she was unable to see inside the
15 vehicle? I think you say -- I'll read it here on page.
16 2: "Mrs. Wilson stated that after a period of
17 approximately 20 minutes she heard a car on the gravel
18 road to the north of her house, and when she looked out
19 her front window she saw the same Datsun 2 southbound on
20 Tortolita road turning east onto Camino De La Ampolar
21 She was unable to see into the car. As she saw the rear
22 of the car it was eastbound. She feels it had a white
23 license plate."

24 Those are your notes verbatim, right?

25 A. Yes.

1 Q. Isn't that what she told you on that day?

2 A. Yes.

3 Q. So at least, as far as you were concerned,
4 she was unable, on the second sighting -- she was unable
5 to see inside the car?

6 A. Apparently, that's true.

7 Q. Now, did she ever indicate to you that when
8 the car was driving away on the second sighting that
9 somehow -- I think at the intersection there with a
10 Camino De La Ampola and Tortolita road there are some
11 traffic-device signs there; is that right?

12 A. I don't recall seeing any traffic-control
13 signs.

14 Q. Did she tell you that the car ran off the
15 road behind any signs? Did she ever indicate that to
16 you?

17 A. I don't recall, no.

18 Q. Did Nora Wilson ever tell you that when she
19 saw the driver of this vehicle that that person was
20 leaning out the window?

21 A. I don't recall her mentioning anything
22 about leaning out the window.

23 Q. Did she ever tell you that she -- that when
24 she first saw this vehicle that she immediately thought
25 that she was going to call the police at that time?

1 A. No. She didn't mention anything about
2 calling the police immediately.

3 Q. Did she ever tell you, after she saw the
4 car the first time, that she had exited her house for
5 any reason to view the car the second time?

6 A. No.

7 Q. Did she indicate to you that she was in her
8 house when she saw the car the second time, standing
9 near the window?

10 A. Yes, in approximately the location as the
11 first sighting.

12 Q. Did she ever tell you that the driver of
13 the vehicle had his elbow out the window?

14 A. No.

15 Q. ~~Did she ever indicate to you that the~~
16 ~~driver of this vehicle that she saw was looking at any~~
17 ~~time directly at her, staring at her, or looking at her?~~

18 A. ~~No.~~

19 Q. Did she ever tell you that the car was
20 making strange noises?

21 A. No.

22 ~~Q. Did she ever describe the driver to you as~~
23 ~~a person who had eyes that were deep-set?~~

24 A. No.

25 Q. Did she ever describe the eyes to you at

1 all?

2 A. No.

3 Q. Did she ever tell you that the nose was a
4 bit on the broad side?

5 A. No.

6 Q. Did she ever tell you that during this
7 period of time that she could fix the time because she
8 knew about the school bus, or that school children were
9 in the area?

10 A. I don't recall any mention of that.

11 Q. ~~Did Nore Wilson ever tell you, outside of~~
12 ~~the fact that she had a sunburn, that she was in~~
13 ~~excruciating pain and was unable to talk to you?~~

14 ~~A. No, she didn't.~~

15 Q. ~~Did Mrs. Wilson give you a copy of any~~
16 ~~notes that she had in her possession?~~

17 ~~A. No.~~

18 Q. Is that the only time that you went to her
19 home?

20 A. Yes, it is.

21 Q. Was there any arrangement made, when you
22 left Mrs. Wilson, to be in contact with her at a later
23 time?

24 A. As I recall, I told her that there would be
25 some follow-up; I don't recall specifically whether I

1 A. No, sir.

2 Q. And did he tell you that he saw a child in
3 the vehicle on the second occasion?

4 A. No, sir.

5 Q. ~~He didn't report anything to you about a~~
6 ~~second sighting, did he?~~

7 ~~He didn't report a second sighting or ever seeing a~~
8 ~~child in the vehicle.~~

9 Q. And you asked him for a description of the
10 driver, did you not, obviously?

11 A. Yes.

12 Q. And he gave you just what I told you, what
13 you indicated, a most limited description; isn't that
14 correct?

15 A. ~~It was limited, basically, to the hair,~~
16 ~~sex, and race.~~

17 Q. Sex being male, race being white, and the
18 hair being -- what?

19 A. Long, bushy, and a general appearance that
20 he described as being scrungy.

21 Q. He couldn't give you any further
22 description than that; is that correct?

23 A. That's all I obtained, yes.

24 Q. If he'd have been able to give you more
25 than that, you would have been prepared to record that

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

STATE OF ARIZONA,

Plaintiff,

vs.

FRANK JARVIS ATWOOD,

Defendant.

Case Nos. CR-14065
CR-15397

May 15, 1980
Tucson, Arizona

HEARING RE: DEFENDANT'S MOTION TO SUPPRESS
IDENTIFICATION

STATE'S MOTION TO COMPEL DISCLOSURE

STATE'S MOTION TO RECONSIDER RULING ON
MOTION TO SUPPRESS SEARCH OF PAROLE OFFICER

STATE'S MOTION FOR REHEARING AND
RECONSIDERATION OF RULING ON
ADMISSIBILITY OF DEFENDANT'S PRIOR
CONVICTIONS

STATE'S MOTION IN LITINE

BEFORE: THE HONORABLE JOHN G. DAWKINS, JUDGE

COPY

Catherine V. Hintzen, RPR
Official Court Reporter
Division XVII

SUPERIOR COURT PIMA COUNTY

1 And was his son also a participant as far
2 as you knew?

3 A Yes, he was an opponent that day.

4 Q Okay. All right.

5 And were you both sitting in the stands
6 together?

7 A Standing behind the stands.

8 Q All right.

9 And did you have conversation with him --

10 A Yes, sir.

11 Q -- on that occasion about this case?

12 A I did.

13 Q Okay.

14 And tell us what that conversation was
15 about.

16 A He said that he had meant to tell me
17 something else about the Hoskinson case. He said that
18 he recalled that he had seen the black Datsun 2-car on
19 Romero Road with the driver and with a small person in
20 it.

21 And I said to him, "I don't remember your
22 mentioning that to me on the phone last September." And
23 he said, "Well, I remember it now, and I wanted to tell
24 you about it." I said, "Well, could you tell who the
25 individual in the car was?" He said, "I don't know

1 whether it was a male or a female. It was a small
2 person in the front passenger's seat."

3 I said, "Well, we are not involved in this
4 case any longer; you need to talk to a sheriff's deputy
5 who is investigating this case, and I will have him
6 contact you."

7 And that was pretty much the end of that
8 conversation.

9 Q Did you kind of tell him that this was not
10 the appropriate forum to discuss this kind of case at
11 this point?

12 A Well, I either said that to him or I backed
13 away, because there were several other persons standing
14 within earshot and I didn't want to go into this any
15 further with some bystanders present.

16 Q But to your knowledge, Agent Bagley, there
17 was absolutely -- as far as you're concerned, no
18 conversation about a second sighting of the black Datsun
19 or a sighting of another person in that black Datsun as
20 far as you were concerned until you had this
21 conversation with him in April or May of 1985.

22 A That is what I recall.

23 Q You do not recall having any telephone
24 conversations with him discussing these facts that we
25 just talked about, the second sighting and the passenger

2-23-87
9:00 AM.

A P P E A R A N C E S

FOR THE PLAINTIFF:

JOHN DAVIS,
ATTORNEY AT LAW

FOR THE DEFENDANT:

STANTON BLOOM,
ATTORNEY AT LAWI N D E XWITNESSES:EXAMINED BY:ON PAGE:

NORA I. WILSON

MR. BLOOM

3

MR. DAVIS

9

MR. BLOOM

17

DAVID D. THOMAS

MR. DAVIS

21

MR. BLOOM

23

MR. DAVIS

53

MR. BLOOM

57

PAUL A. PEDERSEN

MR. DAVIS

62

MR. BLOOM

71

JOSEPH KAY

MR. DAVIS

85

MR. BLOOM

90

MR. DAVIS

106

MR. BLOOM

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PETER J. POWER

MR. DAVIS

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MR. BLOOM

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VICTOR J. KURK

MR. DAVIS

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MR. BLOOM

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MR. DAVIS

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MR. BLOOM

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GARY L. DBAEMERS

MR. DAVIS

151

MR. BLOOM

190

1 A. YES, SIR.

2 Q. AND DOES IT INDICATE THAT HE WAS A HALF A
3 BLOCK, HE SAW THE CAR A HALF A BLOCK FROM I-10?

4 A. THAT'S WHAT THE CARD SAYS.

5 Q. AND THAT HE SAW A MAN AND A CHILD FIGHTING
6 IN THE CAR?

7 A. THAT'S ALSO WHAT IT SAYS, YES.

8 MR. DAVIS: EXCUSE ME, YOUR HONOR. I WOULD LIKE
9 TO OBJECT TO HAVING THE LEAD CARD READ IN BEFORE PROPER
10 FOUNDATION IS LAID.

11 THE COURT: OBJECTION IS OVERRULED. THE ANSWERS
12 MAY STAND.
13 BY MR. BLOOM:

14 Q. ON THE 24TH OF SEPTEMBER, 1984, THAT IS A
15 TIME WHEN YOU ACTUALLY SPOKE TO HIM AT 8:15 IN THE
16 MORNING?

17 A. YES, SIR.

18 Q. AND YOU MADE YOUR OWN CARD REFERENCE TO THAT,
19 ISN'T THAT CORRECT?

20 A. WHAT I DID WAS I JOTTED SOME NOTES OF THE
21 CONVERSATION ON THE BACK OF THIS CARD.

22 Q. OKAY. SO IT WOULD BE THE SAME CARD?

23 A. YES, SIR.

24 Q. ONLY JUST THE FLIP SIDE?

25 A. RIGHT.

1 VEHICLE WAS SHINY; ISN'T THAT RIGHT?

2 A. THAT'S CORRECT.

3 Q. AND HE DIDN'T TELL YOU THAT IT WAS DUSTY OR
4 DIRTY, DID HE?

5 A. NO, HE DID NOT.

6 Q. AND HE DIDN'T TELL YOU THAT THE VEHICLE WAS
7 SHINY ON ITS HOOD BUT IT WAS DIRTY -- AND DIRTY ALL
8 AROUND THE OTHER PARTS?

9 A. NO, SIR.

10 Q. AND HE TOLD YOU THAT IT HAD A TINTED WINDOW,
11 RIGHT?

12 A. I BELIEVE HE DID, SIR.

13 Q. AND THEN HE TOLD YOU IN YOUR NOTE CARD THAT
14 HE DID NOT GET A GOOD LOOK AT THE DRIVER?

15 A. THAT'S CORRECT.

16 Q. BUT NOTICED IT WAS A MAN?

17 A. YES, SIR.

18 Q. AND IT SAID HE APPEARED TO BE HOLDING A
19 CHILD BACK WITH HIS RIGHT ARM, RIGHT; IS THAT CORRECT?

20 A. THAT'S CORRECT.

21 Q. THE CAR MAY HAVE HAD PINSTRIPE OR SOME KIND
22 OF A DOOR PANELING OR SOMETHING, MOULDING?

23 A. MOULDING, YES, SIR.

24 Q. AND HE WILL CALL AGAIN IF HE REMEMBERS ANY
25 MORE DETAILS?

1 A. THAT IS CORRECT.

2 Q. OKAY. NOW, WHEN WE SPOKE, OF COURSE, YOU
3 INDICATED THAT, IN THIS CONVERSATION THAT YOU CERTAINLY
4 WERE CONCERNED ABOUT ANY INFORMATION HE HAD ABOUT THE
5 DRIVER OF THIS CAR; ISN'T THAT RIGHT?

6 A. YES, SIR.

7 Q. YEAH. AND AS A POLICEMAN, YOU ASKED HIM TO
8 DESCRIBE WHAT HE COULD TELL YOU ABOUT THE DRIVER, THE
9 CAR AND THE PASSENGER; YOU HAVE TOLD ME THAT?

10 A. YES, SIR.

11 Q. AND YOU ASKED HIM THOSE SPECIFIC QUESTIONS,
12 WHAT CAN YOU TELL ME; ISN'T THAT RIGHT?

13 A. THAT IS CORRECT.

14 Q. AND YOU WERE PREPARED TO TAKE DOWN WHAT HE
15 COULD TELL YOU; ISN'T THAT RIGHT?

16 A. THAT'S RIGHT.

17 Q. AND HE DIDN'T TELL YOU ANY MORE THAN WHAT'S
18 IN HERE; ISN'T THAT RIGHT, AT THAT TIME?

19 A. THAT'S CORRECT.

20 Q. AND HE DIDN'T TELL YOU ABOUT A DESCRIPTION
21 REGARDING A MUSTACHE OR A BEARD; OR HE DIDN'T TELL YOU
22 ANYTHING LIKE THAT, DID HE?

23 A. NOT ON THAT FIRST TELEPHONE CONVERSATION, NO.

24 Q. THAT'S RIGHT. AND HE DIDN'T DESCRIBE A
25 CHILD TO YOU IN ANY WAY, DID HE?

1 A. NO, SIR.

2 Q. AND HE DIDN'T TELL YOU THAT THE CAR HAD
3 CALIFORNIA PLATES, DID HE --

4 A. NO, SIR.

5 Q. -- AT THAT TIME?

6 AND HE DIDN'T DESCRIBE THE COLOR OF THE
7 PLATE, DID HE?

8 A. NOT --

9 Q. AT THAT TIME?

10 A. NOT DURING THAT FIRST CONVERSATION, NO.

11 Q. WHAT I'M GOING TO ASK YOU ABOUT -- WE WILL
12 GET TO THE SECOND ONE; I KNOW YOU WANT TO TELL US ABOUT
13 THAT; WE WILL GET TO THAT, OKAY? LET'S TALK ABOUT THIS
14 ONE NOW.

15 IN FACT, HE DIDN'T DESCRIBE THE CHILD AT ALL;
16 ISN'T THAT RIGHT?

17 A. THAT'S CORRECT.

18 Q. AND YOU WEREN'T IN A HURRY, WERE YOU?

19 A. NO, SIR.

20 Q. AND YOU DIDN'T RUSH HIM, DID YOU?

21 A. I WOULD HOPE NOT.

22 Q. I MEAN, IF HE HAD SOMETHING TO SAY, YOU WERE
23 THERE TO LISTEN TO IT, RIGHT?

24 A. YES, SIR.

25 Q. THAT WAS YOUR JOB?

1 A. YES.

2 Q. AND HE DIDN'T TELL YOU THAT HIS -- THAT THIS
3 PERSON LOOKED LIKE SOME FRIEND OF HIS OR SOME PERSON HE
4 KNEW IN HIGH SCHOOL, DID HE?

5 A. HE MADE NO MENTION OF THAT.

6 Q. IN FACT, HE NEVER MADE ANY MENTION OF THAT
7 TO YOU, DID HE?

8 A. NEVER.

9 Q. WHEN YOU SAW HIM ON OCTOBER 2ND, WHICH IS
10 THE DATE YOU SAW HIM AT THE BOSA DONUT SHOP, RIGHT?

11 A. RIGHT.

12 Q. YOU WENT TO SEE HIM PERSONALLY?

13 A. THAT'S CORRECT.

14 Q. NEVER TOLD YOU ABOUT ANY HIGH SCHOOL FRIEND
15 THAT HE GRADUATED WITH THAT LOOKED LIKE THE DRIVER?

16 A. NO, HE DIDN'T.

17 Q. AND HE DIDN'T DESCRIBE TO YOU WHEN YOU SPOKE
18 TO HIM THE FIRST TIME ABOUT THAT HE COULD SEE THE BACK
19 LICENSE PLATE?

20 A. NO, HE DIDN'T.

21 Q. OR HE COULD SEE WRITING ON THE BACK OF THE
22 CAR?

23 A. NO, HE MENTIONED NOTHING ABOUT ANY WRITING.

24 Q. OKAY. AND HE DIDN'T TELL YOU ABOUT --
25 DESCRIBE THE PERSON'S HAIR AT ALL, DID HE?

1 A. NO, HE DIDN'T.

2 Q. HE DIDN'T TELL YOU IT WAS PULLED BACK OR
3 ANYTHING LIKE THAT?

4 A. NOT DURING THAT FIRST CONVERSATION.

5 Q. THEN YOU WROTE UP YOUR REPORT ON THIS MATTER,
6 RIGHT?

7 A. ON THE TELEPHONE CONVERSATION, YES.

8 Q. AND THE NOTES YOU WOULD HAVE HAD, WOULD HAVE
9 BEEN THOSE NOTES FROM THIS, FROM THIS CARD, IS THAT
10 RIGHT?

11 A. THAT'S CORRECT.

12 Q. WERE THERE ANY OTHER NOTES?

13 A. IT'S POSSIBLE THERE WERE.

14 Q. BUT, YOU MAY HAVE MISPLACED THOSE NOTES?

15 A. OCCASIONALLY -- ONCE I HAVE COMPLETED A
16 WRITTEN REPORT, I WILL DESTROY THE NOTES.

17 Q. AND IN THAT REPORT YOU INDICATED MUCH THE
18 SAME AS THE CARD, RIGHT?

19 A. THAT'S CORRECT.

20 Q. AND PUT DOWN THERE THAT THE DRIVER -- EXCUSE
21 ME -- THAT MR. MCCORMICK, QUOTE, YOU SAID HE COULD NOT
22 REMEMBER ANY DETAILS OF THE DRIVER'S APPEARANCE.

23 A. THAT IS CORRECT.

24 Q. OBVIOUSLY THAT WAS IN RESPONSE TO THE FACT
25 THAT YOU ASKED HIM IF HE COULD GIVE YOU ANY DETAILS

1 ABOUT THE DRIVER'S APPEARANCE?

2 A. YES, SIR.

3 Q. OR ANY FURTHER DETAILS ABOUT THE CAR OR THE
4 PASSENGER; ISN'T THAT RIGHT?

5 A. THAT'S CORRECT.

6 Q. AND HE SIMPLY WAS UNABLE TO DO THAT?

7 A. YES, SIR.

8 Q. DID HE TELL YOU THAT HE SAW, AT THAT TIME
9 THAT HE SAW ANYTHING IN THE BACK SEAT?

10 A. DURING THE FIRST TELEPHONE CONVERSATION?

11 Q. YES.

12 A. NO, HE DID NOT.

13 Q. DID HE TELL YOU THE CAR WAS FILLED UP WITH
14 ANYTHING IN THE BACK SEAT?

15 A. NO, SIR, HE DID NOT.

16 Q. DID HE TELL YOU THAT HE SAW A BLANKET?

17 A. NO, SIR.

18 Q. DID HE TELL YOU -- AT THAT TIME COULD HE
19 DESCRIBE THE DRIVER'S HAIR COLOR?

20 A. NO, HE DID NOT.

21 Q. DID HE EVER TELL YOU THAT THE DRIVER HAD A
22 LONG FACE?

23 A. NO, SIR.

24 Q. DID HE TELL YOU THAT HE HAD A ROUND NOSE?

25 A. NO, SIR.

1 Q. OR A LARGE NOSE?

2 A. NO, SIR.

3 Q. OR THIN LIPS?

4 A. NO.

5 Q. DID HE EVER MENTION ANY ANTENNA ON THE CAR?

6 A. HE DID NOT.

7 Q. DID HE DESCRIBE THE PERSON'S SHIRT AT ALL?

8 A. NO.

9 Q. IN FACT, WHEN YOU SAY -- WHEN YOU ASKED FOR
10 A DESCRIPTION, YOU ALSO INCLUDE CLOTHING; ISN'T THAT
11 RIGHT?

12 A. YES, SIR, ANYTHING THE WITNESS MIGHT HAVE
13 RECALLED SEEING.

14 Q. FACE OR CLOTHING?

15 A. THAT'S CORRECT.

16 Q. AND HE COULDN'T GIVE YOU ANY DESCRIPTION OF
17 ANY CLOTHING; ISN'T THAT RIGHT?

18 A. THAT'S CORRECT.

19 Q. DID HE TELL YOU THIS PERSON HAD A HEAVY
20 MUSTACHE?

21 A. WE'RE SPEAKING OF THE FIRST CONVERSATION?

22 Q. THAT'S RIGHT.

23 A. NO, HE DID NOT.

24 Q. INCIDENTALLY, THERE WAS CONSTRUCTION IN THIS
25 AREA THAT HE TALKS ABOUT, RIGHT?

1 2ND?

2 A. THAT'S CORRECT.

3 Q. AND THIS WAS -- YOU JUST DIDN'T MAKE A
4 REPORT ON THIS; ISN'T THAT RIGHT?

5 A. THAT'S CORRECT.

6 Q. AND AS YOU SAID, THIS WAS JUST AN OVERSIGHT
7 OR MISTAKE ON YOUR PART?

8 A. YES, SIR.

9 Q. NOW, WHEN YOU SAW HIM ON THE SECOND OCCASION
10 DID HE TELL YOU ANYTHING ABOUT SEEING WRITING ON THE CAR
11 AT ALL?

12 A. NO.

13 Q. DID HE TELL YOU ABOUT THE CAR BEING --
14 DISTINGUISHING BETWEEN SHINY, DUSTY, DIRTY; DID HE DO
15 THAT ON THIS OCCASION?

16 A. I DON'T BELIEVE HE DID.

17 Q. NOW, WHEN YOU SAW HIM, ISN'T THIS AT A TIME
18 WHEN HE -- HE HAD ALREADY SEEN SOMETHING ON TELEVISION?

19 A. YES, HE HAD.

20 Q. DID YOU HAVE SOME PHOTOS? DID YOU HAVE SOME
21 PICTURES OF MR. ATWOOD?

22 A. I WAS PROBABLY IN POSSESSION OF AT LEAST ONE
23 PHOTOGRAPH OF MR. ATWOOD AT THE TIME.

24 Q. OKAY. AND DID YOU SHOW HIM SOME PHOTOGRAPHS?

25 A. I DON'T RECALL SHOWING HIM ANY PHOTOGRAPHS,

1 SIR.

2 Q. SO IF HE SAYS HE LOOKED AT A PHOTOGRAPH AND
3 COULDN'T IDENTIFY IT, IS THAT TRUE OR NOT TRUE? OR YOU
4 DON'T REMEMBER?

5 A. I DON'T RECALL.

6 Q. YOU DON'T KNOW IF YOU DISPLAYED THE PICTURE
7 OF MR. ATWOOD TO HIM IN SOME FORM OR ANOTHER OR NOT?

8 A. I DON'T RECALL.

9 Q. AND YOU -- SO THEREFORE, YOU DON'T RECALL
10 WHAT HE MIGHT HAVE SAID ABOUT IT EITHER, OBVIOUSLY,
11 RIGHT?

12 A. THAT'S CORRECT.

13 Q. AND DID HE INDICATE TO YOU THAT HE HAD SEEN
14 PHOTOGRAPHS OF MR. ATWOOD?

15 A. HE TOLD ME HE HAD SEEN THE TELEVISION NEWS
16 COVERAGE.

17 Q. HE DIDN'T TELL YOU ANYTHING ABOUT
18 PHOTOGRAPHS, RIGHT?

19 A. I DON'T RECALL IF HE SPECIFICALLY MENTIONED
20 A PHOTOGRAPH AS CONTRASTED TO THE NEWS FILM FOOTAGE.

21 Q. WELL, WHEN YOU SAW HIM ON OCTOBER 2ND, HE
22 KNEW, DID HE NOT, THAT MR. ATWOOD HAD BEEN ARRESTED?

23 A. YES, HE DID.

24 Q. AND YOU KNEW THAT, TOO, DIDN'T YOU?

25 A. YES, I DID.

1 Q. WHEN YOU SAW HIM ON THE SECOND -- WHEN YOU
2 SAW HIM, I GUESS WOULD BE YOUR FIRST OCCASION OF
3 ACTUALLY SEEING HIM, COULD HE DESCRIBE THE PASSENGER TO
4 YOU?

5 A. I BELIEVE AT THIS TIME THE ONLY STATEMENT HE
6 MADE WAS HE DESCRIBED SOME OF THE ACTIONS THAT WERE
7 GOING ON AND THE FACT THAT THIS CHILD HAD SHORT HAIR.

8 Q. AND DID HE SAY THAT IT LOOKED LIKE THE
9 PICTURE THAT HE HAD SEEN ON TELEVISION?

10 A. I DON'T RECALL SPECIFICALLY. I WOULD HAVE
11 TO REFRESH MY MEMORY BY LOOKING AT MY NOTES.

12 Q. IF YOUR NOTE SAYS, AND THE KID HAD SHORT
13 HAIR LIKE PIC, WOULD THAT BE LIKE PICTURE?

14 A. THAT'S PROBABLY EXACTLY WHAT HE SAID, THEN.

15 Q. SO THAT WOULD BE IN REFERENCE TO THE PICTURE
16 THAT WAS ON TELEVISION OR SOME PICTURE HE SAW OF VICKI
17 LYNN HOSKINSON?

18 A. RIGHT. IT WAS HIGHLY PUBLICIZED; IT WAS IN
19 THE NEWSPAPERS, ON TELEVISION.

20 MR. BLOOM: OKAY. MAY I APPROACH THE WITNESS,
21 YOUR HONOR?

22 THE COURT: YES.

23 BY MR. BLOOM:

24 Q. I SHOW YOU WHAT HAS BEEN MARKED AAJ, WHICH
25 HAS BEEN IN IDENTIFICATION.

1 IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
2 IN AND FOR THE COUNTY OF MARICOPA
3
4 STATE OF ARIZONA, }
5 PLAINTIFF, }
6 -VS- }
7 FRANK JARVIS ATWOOD, }
8 DEFENDANT. }
9 _____

CR-14065

10
11 PHOENIX, ARIZONA
12 FEBRUARY 19, 1987
13 A.M. SESSION
14
15

16 BEFORE: THE HONORABLE JOHN G. HAWKINS, JUDGE
17
18

19 REPORTER'S TRANSCRIPT OF PROCEEDINGS
20
21
22
23

24 SANDRA G. BOWLING
25 OFFICIAL COURT REPORTER

COPY

1 MAKING A LOT OF NOISE AND JUMPING BACK AND FORTH.

2 Q. HOW LONG DID YOU GET A CHANCE TO OBSERVE WHAT
3 YOU'VE JUST TOLD THE JURY ABOUT AT THAT TIME?

4 A. AT THAT TIME I STOOD AT THE WINDOW FOR AT LEAST A
5 MINUTE.

6 Q. WHAT DID YOU SEE THE DRIVER DO DURING THAT MINUTE?

7 A. WHEN I FIRST CAME TO THE WINDOW, THE DRIVER HAD HIS
8 ELBOW PROPPED UP WHERE THE WINDOW -- THE WINDOW WAS ROLLED
9 DOWN, AND HE WAS LOOKING OVER HIS LEFT SHOULDER AND APPEARED TO
10 BE GAZING IN THE DIRECTION OF THE HOUSE SOUTH OF MY IMMEDIATE
11 NEIGHBOR TO THE SOUTH.

12 Q. AND WHAT WAS THE CHILD DOING?

13 A. THE CHILD WAS SITTING QUITE UPRIGHT, VERY RIGID AND
14 AWAY FROM THE BACK OF THE, OF THE SEAT OF THE CAR AND LOOKING
15 STRAIGHT AHEAD.

16 Q. CAN YOU TELL THE JURORS WHAT YOU CAN REMEMBER ABOUT
17 THE DRIVER'S APPEARANCE?

18 A. THE DRIVER APPEARED TO BE VERY UNKEPT. HE HAD LONG
19 HAIR THAT APPEARED TO BE VERY TANGLED. IT FELL FROM THE CENTER
20 OF HIS HEAD AND CAME OUT AND CAME DOWN ALONG THE SIDE (WITNESS
21 INDICATING). AND THERE WAS HAIR THAT WAS COMPLETELY COVERING
22 THE FRONT OF HIS FACE. HE DIDN'T APPEAR TO BE TOO CLEAN.

23 Q. WHAT VIEWS DID YOU HAVE OF THAT PERSON'S FACE?

24 A. ON THAT INSTANCE, I -- WELL, ACTUALLY I VIEWED HIS
25 RIGHT PROFILE FIRST. AS HE TURNED AROUND, I VIEWED A FRONTAL

1 VIEW OF HIS FACE, HIS LEFT PROFILE AND AGAIN A FRONTAL VIEW OF
2 HIS FACE.

3 Q. WHAT -- WHERE DID THE CAR GO AS YOU WERE OBSERVING
4 IT ON THAT OCCASION?

5 A. WHEN THE DRIVER OF THE CAR ATTEMPTED TO PUT THE CAR
6 IN MOTION, WHEN IT FINALLY TOOK HOLD, IT WENT NORTH -- OUR
7 PROPERTY IS THE LAST HOUSE ON THAT ROAD WHERE IT TERMINATES.
8 IT CUT ACROSS TO A ROAD THAT GOES ALONG THE NORTHERN SIDE OF
9 THE PROPERTY, TRAVELING WEST.

10 Q. OKAY. WHEN YOU SAY THE DRIVER FINALLY GOT IT IN
11 MOTION, WHAT DO YOU MEAN?

12 A. THE CAR WAS BEHAVING VERY STRANGELY AND MAKING
13 STRANGE NOISES. WHEN HE ATTEMPTED TO PULL AWAY, HE SEEMED TO
14 HAVE PROBLEMS GETTING THE CAR IN, IN GEAR, AND IT WAS A NUMBER
15 OF SECONDS BEFORE THE CAR ACTUALLY SEEMED TO TAKE HOLD.

16 Q. OKAY. WHAT DO YOU REMEMBER ABOUT THE CAR THAT YOU
17 CAN TELL THE JURORS?

18 A. I IMMEDIATELY RECOGNIZED THE CAR AS A DATSUN SPORTS
19 CAR ONLY BECAUSE I HAD HAD A FRIEND WHO OWNED ONE THAT APPEARED
20 LIKE IT.

21 THE CAR WAS DIRTY, VERY DUSTY, IT WAS MAKING ALMOST
22 A CRUNCHING NOISE. AND WHILE THE DRIVER DIDN'T APPEAR TO HAVE
23 HIS HANDS ON ANY CONTROLS OF THE CAR, THE CAR SEEMED TO BE
24 LURCHING AS IT WAS IN THAT POSITION.

25 Q. DO YOU RECALL THE COLOR OF THE CAR?

1 Q. AND DID HE BECOME INVOLVED WITH THE OTHER
2 VOLUNTEERS IN THE SEARCH FOR VICKI LYNNE HOSKINSON?

3 A. EVENTUALLY.

4 Q. OKAY. WHEN, WHEN DID YOUR HUSBAND BECOME INVOLVED
5 IN THAT SEARCH?

6 A. FRIDAY.

7 Q. WHEN WAS THE FIRST DAY THAT YOU TRIED TO BRING TO
8 ANY LAW ENFORCEMENT OR SEARCH AND RESCUE PERSON -- BRING TO
9 THEIR ATTENTION THE EVENTS THAT YOU'VE JUST TOLD THE JURY
10 ABOUT?

11 A. SATURDAY AFTERNOON.

12 Q. OKAY. AND WHO WAS IT THAT YOU TRIED TO TELL ABOUT
13 THESE EVENTS ON SATURDAY AFTERNOON?

14 A. I WENT TO THE BUILDING THAT I ONLY KNEW AS A
15 COMMAND POST AND ASKED FOR PERMISSION TO ENTER.

16 Q. OKAY. AND WERE YOU ABLE TO TELL SOMEONE ABOUT
17 THESE EVENTS AT THAT TIME?

18 A. NO, THERE WAS A PERSON OUTSIDE THE DOOR WHO HAD
19 TOLD ME THAT ONLY CERTAIN PERSONS GO IN -- COULD GO INTO THE
20 BUILDING.

21 Q. WAS THIS COMMAND POST THE ONE THAT WAS COORDINATING
22 THE SEARCH?

23 A. I'M REALLY NOT POSITIVE. IT WAS AT A FACILITY ON
24 SILVERBELL ROAD.

25 Q. OKAY. WERE YOU ABLE, HOWEVER, LATER TO REPORT WHAT

1 YOU HAD SEEN TO THE INVESTIGATORS?

2 A. YES.

3 Q. OKAY. AND DID THE POLICE OR LAW ENFORCEMENT PEOPLE
4 COME TO SEE YOU ABOUT THAT?

5 A. YES, THEY DID.

6 Q. OKAY. WOULD YOU TELL THE JURORS WHEN THAT WAS,
7 PLEASE?

8 A. MONDAY MORNING.

9 Q. AND THIS WOULD HAVE BEEN A WEEK AFTER YOU HAD SEEN
10 THE CAR IN FRONT OF YOUR HOUSE?

11 A. THAT'S CORRECT.

12 Q. SO WE'RE TALKING ABOUT -- IF I ADD CORRECTLY, THAT
13 WOULD BE THE 24TH OF SEPTEMBER. WOULD THAT BE RIGHT -- 1984?

14 A. I BELIEVE SO.

15 Q. OKAY.

16 MR. BLOOM: EXCUSE ME, MR. DAVIS.

17 COULD WE APPROACH THE BENCH, PLEASE?

18 THE COURT: YES.

19 (THE FOLLOWING PROCEEDINGS WERE HELD AT THE BENCH:)

20 MR. BLOOM: JUDGE, I WOULD LIKE TO OBJECT TO ANY
21 CONVERSATIONS, ANY INFORMATION THAT WAS HAD AS A RESULT OF THAT
22 SHE HAD WITH THE POLICE OTHER THAN THE PRE-TRIAL IDENTIFICATION
23 THAT YOU HAVE RULED ON.

24 IT APPEARS TO ME THAT MR. DAVIS HAS, HAS INDICATED
25 THAT YOU TRIED TO MAKE CONTACT WITH THE POLICE AND HAD SOME

1 CONVERSATIONS ABOUT WHAT SHE TOLD THEM WITHOUT GOING INTO THEM,
2 BUT THE INFERENCE BEING SHE DID HAVE THOSE CONVERSATIONS.

3 MY PRECISE OBJECTION NOW IS I BELIEVE HE IS ABOUT
4 TO GO INTO SOME CONVERSATION THAT MRS. WILSON HAD WITH THE
5 POLICE OFFICERS ABOUT THE FACT THAT SHE WAS UNABLE TO IDENTIFY
6 THE DEFENDANT AFTER BEING SHOWN THE PHOTOGRAPH.

7 I WOULD OBJECT TO THAT. I DO NOT THINK IT IS PART
8 OF THE PRE-TRIAL IDENTIFICATION PROCEDURE.

9 WHAT HE -- WHAT THE MOTION WAS ABOUT WAS THAT SHE
10 WAS GOING TO TESTIFY THAT SHE SAW HIM ON TELEVISION AND SAID
11 THAT'S HIM. AND I DON'T THINK THE FACT THAT, THAT SHE DIDN'T
12 IDENTIFY HIM ON OTHER OCCASIONS IS RELEVANT UNLESS IT IS
13 BROUGHT OUT ON CROSS-EXAMINATION. AND I DON'T THINK THAT THIS
14 IS LIKE DRAWING A STING OF A PRIOR CONVICTION OR SOMETHING OF
15 THAT NATURE WHICH HE HAS DONE IN THIS CASE.

16 I DON'T THINK THAT HE HAS -- AT THIS POINT THAT IS
17 HEARSAY AND I THINK IT IS ONLY FOR PURPOSES OF IMPEACHMENT.
18 AND I DON'T THINK THAT HE SHOULD BE ABLE TO DRAW IT OUT AT THIS
19 POINT TO SHOW THAT SHE DID NOT MAKE AN IDENTIFICATION. THE
20 PURPOSE OF IT WAS THAT SHE DID MAKE AN IDENTIFICATION IN WHICH
21 YOUR HONOR HAS RULED AS A RESULT OF VIEWING THE DEFENDANT ON
22 TELEVISION.

23 SECONDLY, I AM ALSO CONCERNED ABOUT THIS
24 IDENTIFICATION BECAUSE THERE'S BEEN SOME CONVERSATION ABOUT
25 THAT IT WAS A MUG SHOT AND THAT SHE KNEW ABOUT THE DEFENDANT'S

1 PRIOR CRIMINAL BACKGROUND AT THE TIME THAT SHE HAD DISCUSSIONS
2 ABOUT THIS PARTICULAR PHOTO.

3 SO I AM OBJECTING ON THAT GROUND, AND TOO I WOULD
4 HOPE THAT MR. DAVIS IS WELL AWARE OF THE POTENTIAL PREJUDICE
5 THAT MIGHT OCCUR IF MRS. WILSON WAS ABLE TO SAY ANYTHING OF
6 THAT NATURE REGARDING THAT PHOTOGRAPH.

7 THE COURT: AS TO THE LATTER FIRST, HAVE YOU CAUTIONED
8 HER?

9 MR. DAVIS: YES, I HAVE CAUTIONED HER. AND I HAD
10 PLANNED TO SOMEWHAT LEAD THROUGH THAT, AND SO THAT MY WORDS
11 WOULD BE WORDS RELATING TO THE PHOTOGRAPH AND SO THAT SHE WOULD
12 DO THAT. WORDS TO THE EFFECT OF DID THEY SHOW YOU A
13 PHOTOGRAPH, WERE YOU ABLE TO MAKE AN IDENTIFICATION FROM THAT
14 PHOTOGRAPH SO THAT THE BALL IS NEVER OVER IN HER COURT. BUT I
15 SPECIFICALLY TOLD HER ABOUT THOSE THINGS AT THE BREAK.

16 THE COURT: BUT DO YOU INTEND TO GO INTO THE FAILURE TO
17 IDENTIFY?

18 MR. DAVIS: YES, YOUR HONOR. I HAVEN'T, I HAVEN'T HEARD
19 EVIDENTIARY OBJECTION TO THAT. WHAT HAS BEEN OBJECTED TO IS,
20 IF YOU BOIL DOWN WHAT MR. BLOOM SAYS, IS I WANT THE TACTICAL
21 ADVANTAGE OF BRINGING THAT UP FIRST TO THE JURY.

22 HE DOESN'T SAY IT IS NOT RELEVANT. HE DOESN'T SAY
23 IT IS NOT SOMETHING THAT SHOULD BE GONE INTO. HE SAYS I WANT
24 TO DO IT SO I CAN PRETEND IN FRONT OF THE JURY THAT MR. DAVIS
25 DOESN'T WANT THEM TO HEAR ABOUT THAT.

1 SO IT IS OBVIOUSLY RELEVANT IF HE WANTS TO DO IT.
2 SO, SO WHAT IS THE OBJECTION TO ME DOING IT? IT IS RELEVANT.
3 THIS PERSON IS BEING CALLED TO IDENTIFY, AND ALL THE
4 CIRCUMSTANCES CONCERNING THAT IDENTIFICATION ARE RELEVANT TO
5 THE JURY. AND I THINK I CAN BRING THAT FORWARD ON DIRECT
6 EXAMINATION.

7 THIS IS BASICALLY A MOTION TO PRESERVE A TACTICAL
8 ADVANTAGE FOR MR. BLOOM. IT IS UNFOUNDED, IT IS NOT BASED ON
9 ANY AUTHORITY AND I THINK IT WOULD BE IMPROPER TO TELL ME THAT
10 I CAN'T DO THAT AND HAVE MR. BLOOM DO IT ON CROSS-EXAMINATION.

11 THE RELEVANCY OF IT IS MUCH THE SAME AS THE
12 PREVIOUS ARGUMENTS THAT WE HAVE MADE. IT HAS TO DO WITH HER
13 ABILITY TO RECOGNIZE AND IDENTIFY. IT IS PART OF THE
14 CIRCUMSTANCES ABOUT WHICH SHE BECAME INVOLVED IN THIS CASE, AND
15 I THINK I AM CERTAINLY ALLOWED TO ASK IT ON DIRECT BECAUSE IF
16 IT IS IRRELEVANT IT IS IRRELEVANT FOR BOTH. AND MR. BLOOM
17 ISN'T EVEN PRETENDING THAT THERE'S NOT A RELEVANCY TO IT.

18 THE COURT: MR. BLOOM, DO YOU WANT TO ADD ANYTHING
19 ELSE?

20 MR. BLOOM: NO, YOUR HONOR.

21 THE COURT: THE OBJECTION IS OVERRULED.

22 YOU MAY PROCEED.

23 (THE FOLLOWING PROCEEDINGS WERE HELD IN OPEN
24 COURT:)

25

1 BY MR. DAVIS:

2 Q. MR. WILSON, I THINK WE WERE DISCUSSING THE TIME ON
3 THE FOLLOWING MONDAY IN SEPTEMBER WHEN THE POLICE CAME TO SEE
4 YOU.

5 A. YES.

6 Q. OKAY. AND THEY CAME TO SEE YOU AT YOUR HOUSE, IS
7 THAT RIGHT?

8 A. YES.

9 Q. OKAY. AND ON THAT OCCASION DID THEY SHOW YOU A
10 PHOTOGRAPH?

11 MR. BLOOM: YOUR HONOR, COULD WE HAVE A LITTLE MORE
12 FOUNDATION LAID, PLEASE?

13 THE COURT: MR. DAVIS, JUST THE USUAL FOUNDATION
14 QUESTIONS FIRST.

15 MR. DAVIS: CERTAINLY, YOUR HONOR.

16

17 BY MR. DAVIS:

18 Q. THIS WAS MONDAY THE 24TH OF SEPTEMBER, IS THAT
19 RIGHT?

20 A. YES.

21 Q. OKAY. DO YOU RECALL WHAT TIME OF THE DAY IT WAS
22 WHEN THEY CAME TO SEE YOU?

23 A. NINE A.M.

24 Q. OKAY. AND DO YOU RECALL HOW MANY PEOPLE CAME TO
25 SEE YOU INITIALLY ON THAT DAY AT THAT TIME?

1 A. THERE WERE TWO MEN.

2 Q. ALL RIGHT. AND DID THEY COME INTO YOUR HOUSE OR
3 DID THEY TALK TO YOU ON THE PORCH?

4 A. THEY DID COME INTO THE HOUSE ALTHOUGH I DO --

5 MR. BLOOM: OBJECTION, YOUR HONOR.

6 THE COURT: THAT ANSWERS THE QUESTION.

7 ASK A NEW QUESTION.

8

9 BY MR. DAVIS:

10 Q. WHERE DID THEY TALK TO YOU? WHERE DID YOU SPEAK
11 WITH THEM?

12 A. WE SPOKE IN THE LIVING ROOM.

13 Q. AND DID THEY SHOW YOU A PHOTOGRAPH AT THAT TIME?

14 A. NO.

15 Q. LATER ON THAT DAY DID THEY SHOW YOU A PHOTOGRAPH?

16 A. NO.

17 Q. HOW LONG DID YOU TALK WITH THE POLICE OFFICERS ON
18 THAT OCCASION?

19 A. ONLY ABOUT TEN MINUTES.

20 MR. BLOOM: I AM SORRY, JUDGE. WHICH OCCASIONS IS HE
21 TALKING ABOUT?

22 MR. DAVIS: TWENTY-FOURTH OF SEPTEMBER.

23 MR. BLOOM: BUT SHE SAID TWO TIMES.

24 MR. DAVIS: WE HAVEN'T GOTTEN TO THE SECOND TIME YET.

25 THE COURT: IT IS NOT CLEAR THOUGH BECAUSE YOU MADE

1 REFERENCE TO TALKING TO THEM ON THE 24TH. FIRST TIME?

2

3 BY MR. DAVIS:

4 Q. OKAY. DID THEY TALK TO YOU MORE THAN ONCE ON THE
5 24TH?

6 A. NO.

7 Q. SO THE ONLY TIME THEY TALKED TO YOU ON THE 24TH
8 THERE WERE TWO MEN; IS THAT RIGHT?

9 A. YES.

10 Q. THEY DID NOT SHOW YOU A PHOTOGRAPH?

11 A. NO.

12 Q. AND THEY STAYED WITH YOU ABOUT HOW LONG?

13 A. TEN MINUTES.

14 Q. OKAY. NOW, WHAT WAS YOUR CONDITION AT THE TIME
15 THAT YOU TALKED TO THEM ON THE 24TH?

16 MR. BLOOM: OBJECTION TO THE RELEVANCY, YOUR HONOR.

17 THE COURT: OBJECTION IS OVERRULED.

18 YOU MAY ANSWER THE QUESTION.

19 THE WITNESS: I HAD FIRST- AND SECOND-DEGREE SUNBURN, I
20 WAS HAVING CONSIDERABLE BACK PAIN AND I HAD TAKEN A CODEINE
21 APPROXIMATELY 20 MINUTES BEFORE THEIR ARRIVAL.

22

23 BY MR. DAVIS:

24 Q. DID YOU KNOW THEY WERE GOING TO COME SEE YOU ON THE
25 24TH?

1 A. NO.

2 Q. DID THEY COME TO SEE YOU ON -- DID PEOPLE FROM LAW
3 ENFORCEMENT COME TO SEE YOU AT A LATER OCCASION?

4 A. THE NEXT DAY.

5 Q. AND ABOUT WHAT TIME DID THEY COME SEE YOU THE NEXT
6 DAY?

7 A. MY HUSBAND ARRIVED HOME FROM WORK AT THE SAME TIME
8 THEY ARRIVED. SO I WOULD ASSUME IT WAS PERHAPS 6:00 OR 6:30 IN
9 THE EVENING.

10 Q. AND HOW MANY PEOPLE CAME TO TALK TO YOU AT THAT
11 TIME?

12 A. THERE WERE QUITE A FEW PEOPLE BUT ONLY TWO CAME ON
13 TO THE PORCH TO TALK TO ME.

14 Q. AND YOU TALKED TO THEM ON THE PORCH; IS THAT RIGHT?

15 A. YES.

16 Q. DID THEY SHOW YOU A PHOTOGRAPH AT THAT TIME?

17 A. YES.

18 Q. WERE YOU ABLE TO IDENTIFY THAT PHOTOGRAPH AT THAT
19 TIME?

20 A. I WAS ABLE TO.

21 Q. LET ME ASK YOU THIS. DID YOU MAKE AN
22 IDENTIFICATION AT THAT TIME?

23 A. I REFUSED TO DO THAT.

24 Q. OKAY. AND WHAT WAS THE REASON THAT YOU REFUSED TO
25 DO THAT?

1 MR. BLOOM: OBJECTION, YOUR HONOR.

2 THE COURT: OBJECTION IS OVERRULED.

3 THE WITNESS: THE PHOTOGRAPH THAT I WAS SHOWN WAS VERY,
4 VERY STARK WITH VERY SEVERE CONTRAST, AND I FELT THAT THERE WAS
5 A POSSIBILITY OF SOME DISTORTION. FOR THOSE REASONS --.

6

7 BY MR. DAVIS:

8 Q. WERE THERE A NUMBER OF LAW ENFORCEMENT PEOPLE
9 AROUND YOUR HOME ON THAT EVENING?

10 A. YES.

11 Q. AND WERE THEY SEARCHING IN AREAS NEAR YOUR HOME?

12 A. THEY WENT OVER, OVER THE AREA, YES.

13 Q. HOW LONG DID YOU TALK TO THE LAW ENFORCEMENT PEOPLE
14 ON THAT OCCASION?

15 A. I IMAGINE IT COULD HAVE BEEN UP TO A HALF HOUR.

16 MR. DAVIS: YOUR HONOR, AT THIS TIME --

17 MR. BLOOM: COULD WE HAVE SOME FOUNDATION, YOUR HONOR,
18 AS TO IF SHE KNOWS WHO THESE PEOPLE ARE ON THAT SECOND
19 OCCASION?

20 THE COURT: MR. DAVIS?

21

22 BY MR. DAVIS:

23 Q. DO YOU KNOW WHO THE PEOPLE WERE THAT CAME TO SEE
24 YOU ON THE SECOND OCCASION?

25 A. ONE OF THE MEN IDENTIFIED HIMSELF AS BEING AN

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

State of Arizona,

Plaintiff,

v.

Frank Jarvis Atwood,

Defendant.

Phoenix, Arizona
March 9, 1987

FILED
MAR 13 1987 - 11:35 AM
JUDITH ALLEN, Clerk
By De E. Garcia
Deputy

No. CR 14065

RECEIVED
6-4-87
JAMES N. CORBETT, Clerk
Deputy

BEFORE: The Honorable John G. Hawkins, Judge CR-87-0135

FILED
JUN 22 1987
DAVID R. COLE
CLERK SUPREME COURT
BY DR

REPORTER'S TRANSCRIPT OF PROCEEDINGS

EXCERPT OF TESTIMONY OF KONNIE KOGER

JK

Colleen M. Kidwell
Court Reporter

SUPERIOR COURT

1 said to just call and just tell them if that's what you saw,
2 that's what you saw. If it wasn't, that was fine, too. And
3 I did. And when they asked me what I saw, I had described
4 what I had seen, the little girl and the woman. And I --

5 Q. Go ahead.

6 A. I had said, if this was anything, then fine.
7 If it wasn't, that was also fine. But I thought that I
8 should just tell them what I saw.

9 Q. Okay. I'm going show you Defendant's Exhibit E
10 and ask, may I approach, with the court's permission?

11 THE COURT: Yes, you may.

12 Q. (By Mr. Bloom): Defendant's E and ask if you
13 have ever seen this paper before.

14 A. Yes. That was the composite we drew.

15 Q. Is that the composite that you told Kathy
16 Bright about and that she sketched for you?

17 A. That is right.

18 Q. Okay. And that was based on things that you
19 told her about the person that you saw?

20 A. Right.

21 Q. Okay. Did there come an occasion that -- I'm
22 going show you Defendant's Exhibit AAN, did there come an
23 occasion that you have ever seen this picture before?

24 A. Yes.

25 Q. When did you first see that picture?

1 A. I believe it was a few days after that that
2 they came back and they showed me the picture of this woman
3 and asked if she was the woman that was with the child.

4 Q. Is that -- you mean by they you mean the
5 police?

6 A. That's right.

7 Q. Okay. Mrs. Koger, did you have an opportunity
8 to have this woman or some woman displayed to you by the
9 police?

10 A. Yes, I did.

11 Q. Tell us how that happened.

12 A. They came and they picked me up at work from
13 the Cartoon Junction. This was Peterson, I believe, and we
14 drove over to the trailer park where she lived, and she was
15 standing outside. And we drove by three or four times, and
16 I looked at her through the window of the car as we were
17 going by three or four times.

18 Q. Okay. Were you able to positively identify
19 her?

20 A. I said at the time that she looked like the
21 woman that I had seen. She was quite a distance away from
22 me. She did look like the woman that I had seen, but I did
23 say that I needed to hear her voice because it was the voice
24 that I remembered.

25 Q. Okay. You weren't able to make at that time a

1 positive identification, is that right?

2 A. No, I did not.

3 Q. As you look at that picture now, does that
4 picture resemble anything of the person that you saw at the
5 mall?

6 A. Yes. I did say that she looked like the woman
7 that I had seen with the girl.

8 Q. Okay. Now, let's talk a little bit about the
9 little girl that you saw. Can you describe her for us?

10 A. She was a little girl who looked like she was
11 between the age of eight and ten. She had brown hair. It
12 was sort of wavy, and it was down to about the neckline, and
13 she had a little blue eyes and she had a little spaces
14 between her teeth.

15 She had on a little dress and the dress was
16 very patriotic looking. It was -- it had a full collar and
17 a little elastic waist around her waist.

18 Q. Did you describe the dress to the police?

19 A. The night that I had called in, I did.

20 Q. Okay. Did you make a diagram for the police of
21 the dress?

22 A. Yes, I did.

23 Q. Did they later show you a dress that belonged
24 to the -- to an older sister of Vicki's?

25 A. When we met and I drew a picture of the little

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PIMA

State of Arizona,

Plaintiff,

v.

Frank Jarvis Atwood,

Defendant.

No. CR 14065



Phoenix, Arizona
March 6, 1987
Afternoon session

BEFORE: The Honorable John Hawkins, Judge

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRIAL

file

Colleen M. Grunow
RPR, CSR

SUPERIOR COURT

1 Q. I show you what has been marked AAN and ask if
2 you have ever seen this document before?

3 A. No.

4 Q. Would you look at it, please. Does it look
5 like anybody you have ever seen before?

6 A. No.

7 Q. Does it resemble the woman at all that you saw
8 in the mall?

9 MR. DAVIS: Objection, leading.

10 THE COURT: Objections overruled.

11 THE WITNESS: I'd say the hair.

12 Q. (By Mr. Bloom): Did you -- this is a frontal
13 picture, is that right?

14 A. Yes.

15 Q. Did you ever see the lady from the front?

16 A. No.

17 Q. Show you what has been marked AAJ and ask if
18 you have ever seen this photo before.

19 A. Yes.

20 Q. Do you know what that photo is?

21 A. Picture of the little girl.

22 Q. Of Vicki Lynn Hoskinson?

23 A. Yes.

24 Q. Had you ever seen that on the news?

25 A. Yes.

1 going show you some exhibits, with the court's permission.

2 THE COURT: Yes.

3 Q. (By Mr. Bloom): AA -- excuse me, show you
4 defendant's Exhibit E and ask if you have ever been shown
5 this particular picture before?

6 A. Yes, I was.

7 Q. Do you remember when you were shown that?

8 A. The next day.

9 Q. Okay. And do you know if you were able to
10 identify that sketch?

11 A. Yes, I did.

12 Q. What did you say about it?

13 A. I said that it looked like the person that I
14 saw with Vicki or the little girl.

15 Q. Okay. You didn't know who Vicki was at that
16 time, did you?

17 A. I knew that she was missing.

18 Q. Okay. On -- ask you to look at Defendant's AAN
19 and have you ever seen this picture before?

20 A. Yes, I have.

21 Q. When did you first see this picture?

22 A. The same time I saw this one.

23 Q. Did you have an opinion about whether you had
24 seen that picture or that person in that picture?

25 A. I said that I might have because I didn't see

1 the face. All I saw was the side view.

2 Q. You never saw a frontal view of this person?

3 A. No, I didn't.

4 Q. I'm going show you now -- let me ask you this:

5 Can you give us any further description of the woman that
6 you saw with the girl?

7 A. No, I can't.

8 Q. Can you give us a description of the girl that
9 you saw?

10 A. She was about probably four three, I'm not sure
11 on the height, short brown hair, freckles, cute little girl.
12 She had a dress on.

13 Q. Do you know what color the dress was?

14 A. Red, white and blue striped.

15 Q. Had you ever seen that little girl before?

16 A. No, I hadn't.

17 Q. Is the Burger Express on the level, first
18 level?

19 A. Yes, it is.

20 Q. There are other shops in the second level?

21 A. Right.

22 Q. Have you ever been to the Cartoon Junction?

23 A. Yes, I have.

24 Q. And what level is that on?

25 A. Second level.

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF PIMA

State of Arizona,)
)
 Plaintiff,)
)
 v.)
)
 Frank Jarvis Atwood,)
)
 Defendant.)
 _____)

No. CR 14065



Phoenix, Arizona
March 10, 1987

BEFORE: The Honorable John Hawkins, Judge

REPORTER'S TRANSCRIPT OF PROCEEDINGS

JURY TRIAL

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Prepared on Appeal
Original
Copy

Colleen M. Grunow
RPR, CSR

1 remember, but I think that the person that I talked to the
2 following day might have shown me this.

3 Q. Is that the only time you think you might have
4 seen it?

5 A. Yes.

6 Q. Is that look anything like the person that you
7 saw?

8 A. Somewhat. I don't know for sure.

9 Q. Okay. I'll show you what has been marked
10 Defendant's AAN and ask you to look at this document. Okay.
11 Look at it to yourself. Have you ever seen that person
12 before?

13 A. I don't know.

14 Q. Does that person look at all familiar to you?

15 A. No.

16 Q. Does that look at all like the person that you
17 saw on September --

18 THE COURT: I'm sorry, Mr. Davis, an
19 objection?

20 MR. DAVIS: Objection, asked and
21 answered.

22 THE COURT: Objection's overruled.

23 THE WITNESS: Could you repeat the
24 question?

25 Q. (By Mr. Bloom): Does that person look at all

1 like the woman you saw on September 17?

2 A. Somewhat.

3 Q. Okay. Did you -- you said you saw a little
4 girl. You know how tall that little girl was?

5 A. No.

6 Q. Okay. Do you -- can you tell us how the woman
7 was treating the little girl?

8 A. Yes. The only reason that I even took notice
9 to the customers was because the woman pulled up a child. I
10 think the reason was because they had ordered two hot dogs
11 and one lemonade, and the child asked for her own lemonade
12 or she wanted something else and the woman was rough and
13 said no and grabbed her arm and pulled her toward, real
14 close to her. And then I thought to myself -- I was very
15 angry because I thought how parents treat their children
16 these days and I was angry at the woman.

17 Q. You didn't know if this woman was the parent or
18 not though, did you?

19 A. I had no idea.

20 Q. That evening you had an occasion to learn of or
21 some other time that evening or the next morning you had
22 occasion to learn of the disappearance of Vicki Lynn
23 Hoskinson, is that right?

24 A. Yes, that evening.

25 Q. Did you see it on television?